

No. _____

IN THE SUPREME COURT OF THE STATE OF NEVADA

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR THE
COUNTY OF CLARK, STATE OF NEVADA, AND THE HONORABLE
MARK R. DENTON,

Respondents,

and

WESTLAND LIBERTY VILLAGE, LLC, A NEVADA LIMITED LIABILITY
COMPANY; WESTLAND VILLAGE SQUARE, LLC A NEVADA LIMITED
LIABILITY COMPANY; AMUSEMENT INDUSTRY, INC., WESTLAND
CORONA LLC, WESTLAND AMBER RIDGE LLC, WESTLAND
HACIENDA HILLS LLC, 1097 NORTH STATE, LLC, WESTLAND
TROPICANA ROYALE LLC, VELLAGIO APTS OF WESTLAND LLC,
ALEVY FAMILY PROTECTION TRUST, WESTLAND AMT, LLC, AFT
INDUSTRY NV, LLC, AND A&D DYNASTY TRUST,

Real parties in interest.

From the Eighth Judicial District Court, County of Clark, Dept. XI
Dist. Court Case No. A-20-819412-C

**APPENDIX TO PETITION FOR A WRIT OF PROHIBITION
VOLUME 2**

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PETITIONER'S APPENDIX
ALPHABETICAL INDEX

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DATED: April 18, 2022

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On April 18, 2022, I caused to be served a true and correct copy of the foregoing **APPENDIX TO PETITION FOR A WRIT OF PROHIBITION VOLUME 2** upon the following by the method indicated:

- ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

Honorable Mark R. Denton
Eighth Judicial District Court
Dept. XIII
Regional Justice Center
200 Lewis Ave.
Las Vegas, Nevada 89101

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

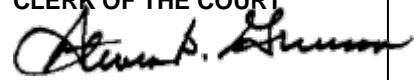
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Westland Tropicana Royale LLC;
Vellagio Apts of Westland LLC;
The Alevy Family Protection trust;
Westland Amt, LLC;
Aft Industry NV, LLC; and
A&D Dynasty Trust

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, a
Nevada Limited Liability Company; and
WESTLAND VILLAGE SQUARE, LLC, a
Nevada Limited Liability Company,

Defendants.

AND ALL RELATED ACTIONS

CASE NO. A-20-819412-B

DEPT NO. XIII

**OPPOSITION TO PLAINTIFF'S
PARTIAL MOTION TO DISMISS
DEFENDANT'S FIRST AMENDED
ANSWER AND AMENDED
COUNTERCLAIM**

Date of Hearing: December 16, 2021

Time of Hearing: 9:00 a.m.

1 Defendants-Counterclaimants Westland Liberty Village, LLC (“Liberty LLC”) and Westland
2 Village Square, LLC (“Square LLC” and in combination with Liberty LLC, “Westland”),
3 Amusement Industry, Inc. (“Amusement”), Westland Corona LLC (“Corona”), Westland Amber
4 Ridge LLC (“Amber”), Westland Hacienda Hills LLC (“Hacienda”), 1097 North State, LLC (“1097
5 North”), Westland Tropicana Royale LLC (“Tropicana”), and Vellagio Apts of Westland LLC
6 (“Vellagio” and in combination with Amusement, Corona, Amber, Hacienda, 1097 North, and
7 Tropicana, the “Westland Credit Facility Entities”), The Alevy Family Protection Trust (“AFP
8 Trust”), Westland AMT, LLC (“Westland AMT”), AFT Industry NV, LLC (“AFT NV”), A&D
9 Dynasty Trust (“Dynasty Trust” and in combination with AFP Trust, Westland AMT, AFT NV, and
10 Amusement, the “Westland Securities Entities”, and collectively Westland, Westland Credit Facility
11 Entities and Westland Securities Entities, are referred to herein as the “Counterclaimants”) by and
12 through their counsel of record, hereby file this Opposition to “Plaintiff and FHFA’s Motion to
13 Dismiss in Part Defendants’ First Amended Answer and Amended Counterclaim” (the “MTD” and
14 “MTD Opposition”). This MTD Opposition is based on the pleadings filed in the Case, the attached
15 Memorandum of Points and Authorities, anything that the Court may or must take Judicial Notice of,
16 and any arguments of counsel that this Court may allow at the time of the hearing.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 The Counterclaim contains a clear, plain statement of each claim, which have already been
20 tested and held sufficient when on October 22, 2020, the Court granted Westland’s request for a
21 preliminary injunction, and on February 4, 2021, when this court entered an Order denying in all
22 material respects Federal National Mortgage Association’s (“Fannie Mae”) prior Motion to Dismiss.
23 Notably, several of the counterclaims, including the first, second, fifth, ninth, and tenth claims, are
24 virtually unchanged.

25 As such, the first argument Fannie Mae and the Federal Housing Finance Agency (“FHFA”)
26 raise, which is that the Counterclaims fail to identify the parties to which the first, second, fifth, ninth,
27 and tenth counterclaim applies is not well placed. Those claims were originally plead by Liberty LLC
28 or Square LLC with little to no changes to the claims themselves and make no reference to any other

1 party. The only paragraph of each claim that can be interpreted to the contrary is the initial line, which
2 was unchanged. It continues to refer to “Counterclaimant” when incorporating the preceding
3 paragraphs. The third counterclaim explicitly references the Westland Credit Facilities Entities as the
4 parties asserting the claims. Finally, the fourth counterclaim explicitly references all Counterclaimants
5 related to the breach of the covenant of good faith and fair dealing arising from the Loan Agreements,
6 the Master Credit Facility Agreements, the related guarantees, and applications that required
7 submission of the financial statements and financials of the Westland Securities Entities.

8 Second, the forum selection clause in the Master Credit Facility Agreement is permissive, not
9 mandatory, as Fannie Mae represents. In drafting the forum selection clause, it now seeks to apply,
10 Fannie Mae did not limit all suits to the federal circuit in Washington, D.C. Rather, the clause permits
11 suits to be brought not only there, but in other, possibly several other, jurisdictions. In our case,
12 Fannie Mae already chose the forum for the whole dispute – Nevada. Neither Fannie Mae nor FHFA
13 challenges joinder of the Westland Securities Entities or the Westland Credit Facility Entities as
14 Counterclaimants. Nor does either of those parties challenge the new Counterclaimants’ right to bring
15 new claims. Fannie Mae and FHFA thus concede that all of the parties and claims arise from the
16 “same transaction or occurrence” or “series of transactions and occurrences.” Thus, the forum is
17 proper where Fannie Mae brought suit, and the additional forum selection clause is not implicated.

18 However, even if it were, the Counterclaim asserts that Fannie Mae retaliated against the
19 Master Credit Facility Entities in part by taking discriminatory actions against the Nevada corporate
20 entities, including by placing them on a-check in bad faith. Thus, in essence, Fannie Mae seeks
21 improperly to bifurcate this matter. Under those circumstances, aside from the fact that the consent to
22 jurisdiction clause is not mandatory, it would also not be “reasonable and just” to permit Fannie Mae
23 to apply the forum selection clause to the Westland Credit Facility Entities and thus force these
24 matters to be parceled out into different for a – of Fannie Mae’s choice of course, with the resultant
25 risk of inconsistent rulings, finding and judgments, and the astronomically higher costs of litigation.

26 //

27 //

1 Third, Fannie Mae attempts to assert that punitive damages and attorney’s fees are statutorily
2 precluded, but neither punitive damages nor attorney’s fees are “amounts in the nature of penalties or
3 fines” within the meaning of 12 U.S.C. § 4617(j)(4) that would generally preclude such civil
4 damages. Tellingly, Fannie Mae’s reading of the statute would render 12 U.S.C. § 4617(d)(3)(B)’s
5 express limitation of “punitive or exemplary damages” for contract repudiation superfluous, would
6 improperly negate Westland’s right to offset Westland’s liability to Fannie Mae under the Loan
7 Agreements (a circumstance that FHFA would not “be liable” for penalties/fines, and a right FHFA
8 has no power to avoid in conservatorship), and would ignore the statute’s definition of the term
9 “[t]he Agency” – a term that does not include Fannie Mae.

10 Fourth, Fannie Mae disputes “attorney’s fees for [the] contract-based claims” upon the
11 assertion that “no basis” was provided for such damages. (Br. at 17-18.) Notice of the basis for such
12 fees is plead in each claim, but to the extent that a further basis is required, Counterclaimants are
13 entitled to attorneys’ fees as special damages. *See Sandy Valley Associates v. Sky Ranch Estates*
14 *Owners Ass’n*, 117 Nev. 948, 957, 35 P.3d 964, 969 (2001) (clarifying contract-based requests for
15 attorneys’ fees are addressed post-trial, but three separate bases for costs as special damages are
16 permitted). The *Sandy Valley* court stated attorney fees are available as special damages when the
17 natural and proximate cause of injurious conduct, related to third-party actions, and to recover real or
18 personal property or in clarifying or removing a cloud upon title to property. *Id.* The first basis
19 applies to the first, second, third, fourth, eighth, ninth, and tenth causes of action, the second basis
20 applies to the fourth cause of action, and the third basis applies to the fifth, eighth, ninth, and tenth
21 causes of action.

22 Fifth, Fannie Mae’s arguments in favor of a waiver of consequential damages are overstated.
23 The section and paragraph of the cited provision of the Loan Agreement show the language is limited
24 to situations that Fannie Mae is resorting to foreclosures and related accountings for collateral.
25 Specifically, each clause is within a two paragraph Waiver of Marshaling section of the Loan
26 Agreement and MCFA that Fannie Mae drafted. Waiver of marshaling relates to the waiver of a
27 specific equitable doctrine requiring that the lender proceed through each source of collateral before
28 proceeding to the next. The two paragraphs show an intent that Fannie Mae and its principals not be

1 held liable for damages related to seeking recovery from collateral or in how it applies funds from a
2 foreclosure unless due to gross negligence or willful misconduct. This purported limitation on
3 consequential damages does not apply to all conduct related to the entire Loan Agreement. Certainly,
4 it does not apply to the retaliatory and discriminatory faith loan servicing against affiliated entities that
5 occurred in this matter.

6 Finally, to the extent that the Court is inclined to grant any portion of Fannie Mae's motion,
7 Counterclaimants seek leave to amend consistent with this filing.

8 II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

9 Through extensive and ongoing motion practice, the Court has been made aware of the
10 underlying facts of this action. In short, this case originally arose when Fannie Mae and its servicing
11 agent, Grandbridge, filed an improper Notice of Default and Acceleration of Note before commencing
12 improper non-judicial foreclosure proceedings. (Counterclaim, ¶ 1.) This illegal conduct threatened
13 Westland's two multifamily housing communities located at 4870 Nellis Oasis Lane, Las Vegas,
14 Nevada 89115, and 5025 Nellis Oasis Lane, Las Vegas, Nevada 89115, and was based on
15 unsupportable non-financial defaults, which, despite multiple requests by Westland, have never been
16 substantiated, and to the contrary and rather simply, were manufactured by Fannie Mae and its
17 servicer. (*Id.* at ¶¶ 1, 9, 15, 24 & 25.) Only after Fannie Mae filed this litigation did Westland first
18 discover that the lynchpin to Fannie Mae's assertion of a purported default was a purported decline in
19 occupancy rates that Fannie Mae equates to "deterioration" in the condition of the Mortgaged
20 Property. However, the Loan Agreements only cite instances of physical deterioration of the
21 Mortgaged Property to support a request for additional reserves. (Counterclaim, ¶¶ 11, 107, 187, 207,
22 230, 258-59, 450; Supplemental Declaration of James Noakes in Support of Plaintiff's Application for
23 Appointment of a Receiver and Opposition to Defendants' Countermotion, at ¶¶ 5-8 [asserting
24 deterioration based on a decline in occupancy rate].)

25 Still, Fannie Mae, based on the false and repeatedly rejected alleged defaults by Westland, has
26 remarkably claimed to be undersecured when the Properties have tens of millions in equity each.
27 Nonetheless, based on its false assertions, Fannie Mae filed this action alleging two causes of action –
28 to appoint a receiver and for an assignment of rents. (*See generally*, Plaintiff's Complaint.) In light of

1 the facts, including the Properties' improved condition, financial stability, and significantly improved
2 value, it is not surprising that Fannie Mae flatly failed about a year ago in its attempt to have a receiver
3 appointed. (*See, e.g.*, Counterclaim, ¶¶ 162-65.) Also, in response, Westland filed a countermotion,
4 and in October 2020, was granted a preliminary injunction which upheld the *status quo ante litem* – by
5 placing the Parties in the position they were before the Lenders illegally declared a Default. (Order,
6 dated November 20, 2020.) However, Fannie Mae's tactics have caused this action to mushroom with
7 nearly constant motion practice, multiple pending appeals, and intervention by its Conservator, the
8 Federal Housing Finance Agency.

9 Importantly, some of Fannie Mae's illegal acts, its breach of other provisions in the underlying
10 contracts, and its tortious and retaliatory actions have been directed not only at the two Defendants but
11 the eleven intervening Counterclaimants - all of which are Westland affiliates. (Counterclaim, ¶¶ 260,
12 279-80, 294-302, 453, 463, 473-76.) Fannie Mae's actions - designed as retribution and likely to
13 attempt to create some leverage in this action – threaten Counterclaimants' hundreds of millions of
14 dollars invested in real estate assets, their relationships with other lenders, and their business
15 operations related to various business transactions they were entitled to engage in using funds that
16 Fannie Mae illegally and unilaterally blocked, all which occurred as a result of Fannie Mae declaring
17 an improper default and extending that purported default to a host of other loans and entities by
18 including all Westland entities on a-check. Fannie Mae's actions are coercive and particularly
19 troublesome because Westland had taken action to notify Fannie Mae that Sellers had provided
20 fraudulent misrepresentations and concealments within its financial statements, and in the colloquial,
21 "cooked the books" by overstating rental income and occupancy rates, all of which Westland relied
22 upon in its early dealings with Fannie Mae. (Counterclaim, ¶¶ 140-44.) And, despite the evidence of
23 Seller's wrongdoing, Fannie Mae improperly used these fraudulent numbers to attempt show a
24 "decline in occupancy" to support its claim for "deterioration" that it used to declare a Default.

25 Based on the foregoing facts, the Counterclaims were plead to contain a clear, plain statement
26 of each claim. Further, those claims have already been tested and held sufficient when on October 22,
27 2020, the Court granted Westland's request for a preliminary injunction, and on February 4, 2021,
28 when this court entered an Order denying in all material respects Federal National Mortgage

1 Association's ("Fannie Mae") prior Motion to Dismiss. Notably, several of the Counterclaims are
2 virtually unchanged, including the first, second, fifth, ninth, and tenth causes of action. (Exhibit 1
3 [red-lined First Amended Answer and First Amended Counterclaim].) In fact, for each claim, the only
4 language that is non-specific as to the substantive section of the Counterclaims involves the opening
5 line of each claim, which generally states: "Counterclaimants repeat, reallege, and incorporate the
6 allegations set forth in the preceding paragraphs as if fully set forth herein." Otherwise, the word
7 Counterclaimants is not used in those claims. (Counterclaim, ¶¶ 432, 444, 456, 466, 479, 532, and
8 542.)

9 **III. LEGAL ARGUMENT**

10 **A. Dismissal Is Improper - Each Claim Explicitly Identifies The Counterclaimant.**

11 Each cause of action specifically identifies the party on whose behalf the particular claim is
12 plead. Notably, in the initial Counterclaim, the claims were originally and only plead by Liberty LLC
13 or Square LLC. Thus, little to no change has been made to the majority of the previously existing
14 claims raised by those parties. Further, no reference has been added in those Counterclaims to
15 additional parties. (See Exhibit 1 [Red-lined First Amended Counterclaim], Claims 1, 2, 5, 9, 10.) In
16 fact, based on the additional parties added to this matter, the only paragraph of each claim that can be
17 interpreted to the contrary is the initial line of each cause of action, which was unchanged before and
18 after the Counterclaims were amended and continues to refer to "Counterclaimants" when
19 incorporating the preceding paragraphs. (Counterclaim, ¶¶ 432, 444, 456, 466, 479, 532, and 542.)

20 Further, by way of example, the specificity regarding each Counterclaimant that the cause of
21 action applies to is shown by the language in the First Cause of Action, which states: "a valid
22 assumption agreement was entered into between Liberty LLC," "which obligations were assumed by
23 Liberty LLC," "Liberty LLC has performed all of the duties and obligations," "Fannie Mae . . .
24 breached their Loan Agreements with Liberty LLC," and "Liberty LLC has been damaged . . ."
25 (Counterclaim, ¶¶ 433, 438, 439, 441 and 444.) For that reason, the First Cause of Action applies to
26 Liberty LLC. Finally, while a limited number of paragraphs more broadly identify "Westland," the
27 introductory section of the Counterclaim defines Westland as Liberty LLC and Square LLC only.
28 (Counterclaim, page 14.)

1 In terms of the previously existing causes of action, the sole exception involving a change in
2 the applicable Counterclaimants is the fourth cause of action, which has been broadened to include
3 every Counterclaimant. (Counterclaim, ¶¶ 475-78.) But, the fourth counterclaim explicitly references
4 all Counterclaimants related to the breach of the covenant of good faith and fair dealing (*Id.*) and also
5 alleges that duty arises from the Loan Agreements, the Master Credit Facility Agreement, the related
6 guarantees, and the applications that required submission of the financial statements/financial records
7 of the Westland Securities Entities. (Counterclaim, ¶¶ 468, 469, 472, 473.) As such, each
8 Counterclaimant was validly included in that claim because each of those parties was harmed by
9 Fannie Mae's breach of the duty of good faith and fair dealing when engaging in bad faith loan
10 servicing and placing entities other than those involved with the Loan Agreement on a-check.

11 Finally, the third counterclaim explicitly references the Westland Credit Facilities Entities as
12 the parties to which that claim applies. (Counterclaim, ¶¶ 457, 461-65.)

13 As such, the first argument Fannie Mae raises, namely that the Counterclaims fail to identify
14 the parties to which the first, second, third, fourth, fifth, ninth, and tenth cause of actions apply, is
15 inapplicable and an improper basis to dismiss any portion of those claims.

16 **B. The Intended Beneficiary Arguments Are Misplaced, Because If No Contractual,**
17 **Intended Beneficiary, Or Other Contract Based Relationship Existed Between**
18 **Fannie Mae and the Westland Affiliated Entities, Then Fannie Mae's Bad Faith**
Actions By Improperly Placing Entities On A-Check Gave Rise to A Tort

19 Fannie Mae argues that failing to plead that the various Westland-affiliated entities were
20 parties or intended beneficiaries of each agreement requires the dismissal of those Counterclaimants
21 from the implied breach of good faith and fair dealing claim because only a party to the contract or
22 intended beneficiary can sue on a breach of contract claim. (MTD, at 8-10.) However, despite the
23 contracts' intended beneficiary disclaimer, Westland disagrees. *See In Am. Fed'n of Musicians v.*
24 *Reno's Riverside Hotel, Inc.*, 86 Nev. 695, 699, 475 P.2d 220, 222 (1970) (finding that a successor to
25 a party who was alleged to have breached a contract could state a claim for compensatory damages
26 after the party was improperly placed on a "National Defaulters List").

27 Moreover, a breach of the duty of good faith and fair dealing may give rise to both contract
28 and tort claims. *Hilton Hotels Corp. v. Butch Lewis Productions, Inc.*, 109 Nev. 1043, 1046-47, 862

1 P.2d 1207, 1209 (1993). Specifically, in *Hilton Hotels*, the defendants contended that the court’s
2 prior ruling that no liability existed on a breach of contract claim “precludes further litigation *against*
3 *any party not privy to the Hilton/Duo contract* and forecloses the pursuit of any of the former claims
4 other than that of the alleged breach of the implied covenant of good faith and fair dealing.” 109
5 Nev. at 1046 (emphasis added). However, the *Hilton Hotels* court disagreed, and held: “that a
6 wrongful act which is committed during the course of a contractual relationship may give rise to
7 both tort and contractual remedies” and remanded to determine whether tort liability should be
8 imposed on additional parties, who were not parties to the contract. *Id.* Moreover, the Court
9 reiterated that “the duty not to act in bad faith or deal unfairly thus becomes a part of the contract,
10 and . . . In certain circumstances, breach of contract, including breach of the covenant of good faith
11 and fair dealing, may provide the basis for a tort claim.” *Hilton Hotels Corp.*, 109 Nev. at 1046–47
12 (quoting *Wagenseller v. Scottsdale Memorial Hosp.*, 147 Ariz. 370, 383, 710 P.2d 1025, 1038
13 (1985)).

14 As such, if Fannie Mae did not place the affiliated-Westland entities on its a-check list based
15 on a contractual right, then Fannie Mae clearly engaged in coercive behavior designed to improperly
16 extract additional funds and to intentionally interfere with Counterclaimant’s lending relationships,
17 which would subject Fannie Mae to liability for business tort claims. Accordingly, in such a case, the
18 Westland Credit Facility Entities and Westland Securities Entities request leave to state appropriate
19 business tort claims.

20 **C. Fannie Mae’s Attempt to Use a Permissive Forum Selection Clause To Bifurcate**
21 **This Matter Is Improper.**

22 The Nevada Supreme Court has held that a forum selection clause stating the parties “agree
23 and submit themselves to the jurisdiction of the courts of the State of Utah with regard to the subject
24 matter of this agreement” was permissive. *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 738,
25 742, 359 P.3d 105, 106, 108 (2015). In *Soro*, this state’s highest court made clear that to be
26 mandatory, it is not enough to mention a particular forum or to specify that disputes will be resolved
27 there, but rather the agreement must contain “words of exclusivity” and that “[a]bsent such language,
28 we deem the clause permissive.” 131 Nev. at 742. The parenthetical comments that the Nevada

1 Supreme Court positively cited from other jurisdictions are telling, as even stringent language was
2 deemed permissive unless only one particular court is stated to have exclusive jurisdiction. *Id.* at 741.
3 Specifically, the Nevada Supreme Court reviewed the caselaw and recognized the following out of
4 state authority in finding the challenged clause permissive:

5 *John Boutari & Son, Wines & Spirits, S.A. v. Attiki Imps. & Distribs Inc.*, 22 F.3d 51,
6 52–53 (2d Cir.1994) (holding the forum selection clause, “[a]ny dispute arising
7 between the parties hereunder shall come within the jurisdiction of the competent
8 Greek Courts, specifically of the Thessaloniki Courts,” **as permissive** (internal
9 quotation marks omitted)); *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75,
10 76–78 (9th Cir.1987) (holding the forum selection clause, “[t]he courts of California,
11 County of Orange, shall have jurisdiction over the parties in any action at law relating
12 to the subject matter or the interpretation of this contract,” **as permissive, and noting
that to be considered mandatory, a forum selection clause must clearly require
that a particular court is the only one that has jurisdiction** (internal quotation
marks omitted)); *Keaty v. Freeport Indon., Inc.*, 503 F.2d 955, 956–57 (5th Cir.1974)
(holding the forum selection clause, “[t]his agreement shall be construed and
enforceable according to the law of the State of New York and the parties submit to
the jurisdiction of the courts of New York,” **as permissive** (internal quotation marks
omitted)).

13 *Soro*, 131 Nev. at 741–42 (emphasis added).

14 Faced with the stringent exclusivity requirement established by the Nevada Supreme Court,
15 Fannie Mae selectively quotes the forum selection clause related to the Master Credit Facility
16 Agreement and by doing misleads this Court regarding its permissive nature. The full clause provides:

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1 **Section 15.01 Choice of Law; Consent to Jurisdiction.**

2 Notwithstanding anything in the Notes, the Security Documents, or any of the other
3 Loan Documents to the contrary, each of the terms and provisions, and rights and
4 obligations of Borrower under this Master Agreement and the Notes and the other
5 Loan Documents, shall be governed by, interpreted, construed, and enforced pursuant
6 to and in accordance with the laws of the District of Columbia (excluding the law
7 applicable to conflicts or choice of law) except to the extent of procedural and
8 substantive matters relating only to the creation, perfection, and foreclosure of liens
9 and security interests, and enforcement of the rights and remedies, against the
10 Mortgaged Properties, *which matters shall be governed by the laws of the jurisdiction*
11 *in which a Mortgaged Property is located*, the perfection, the effect of perfection and
12 non-perfection and foreclosure of security interests on personal property, *which*
13 *matters shall be governed by the laws of the jurisdiction determined by the choice of*
14 *law provisions of the Uniform Commercial Code in effect for the jurisdiction in which*
15 *any Borrower is organized*. Borrower agrees that any controversy arising under or in
16 relation to the Notes, the Security Documents (other than the Security Instruments),
17 or any other Loan Document shall be, *except as otherwise provided herein*, litigated
18 in the District of Columbia. The local and federal courts and authorities with
19 jurisdiction in the District of Columbia shall, except as otherwise provided herein,
20 have jurisdiction over all controversies which may arise under or in relation to the
21 Loan Documents, including those controversies relating to the execution, jurisdiction,
22 breach, enforcement, or compliance with the Notes, the Security Documents (other
23 than the Security Instruments), or any other issue arising under, relating to, or in
24 connection with any of the Loan Documents. Borrower irrevocably consents to
25 service, jurisdiction, and venue of such courts for any litigation arising from the
26 Notes, the Security Documents, or any of the other Loan Documents, and waives any
27 other venue to which it might be entitled by virtue of domicile, habitual residence, or
28 otherwise. *Nothing contained herein, however, shall prevent Lender from bringing*
any suit, action, or proceeding or exercising any rights against Borrower and against
the collateral in any other jurisdiction. Initiating such suit, action, or proceeding or
taking such action in any other jurisdiction shall in no event constitute a waiver of the
agreement contained herein that the laws of the District of Columbia shall govern the
rights and obligations of Borrower and Lender as provided herein or the submission
herein by Borrower to personal jurisdiction within the District of Columbia.

19 Exhibit 1, at 103 (emphasis added). As the italicized language clarifies, the forum selection clause is
20 not exclusive but rather contains three provisions that provide for jurisdiction in other forums.
21 Tellingly, in this case, the other forums identified would all be Nevada, which is the location of the
22 properties secured by the Master Credit Facility Agreement, the state of incorporation where the
23 borrowers are organized, and the state from which Lender asserted a default that resulted in it
24 improperly “exercising [] rights against Borrower” by tortiously placing them all on a-check.

25 As such, the forum selection clause is not mandatory as Fannie Mae suggests, because the
26 clause specifically reserved the right for Fannie Mae to bring suit “or exercis[e] any rights” in other
27 jurisdictions, specifically limited jurisdiction by stating “except as otherwise provided herein,” and
28 designated three instances when suit may be filed in other jurisdictions. Simply stated, the forum

1 selection clause is not one that clearly requires suit in a particular court as the only one having
2 jurisdiction as it must to be mandatory. Just as importantly, Fannie Mae actually exercised rights in
3 another jurisdiction when it chose to file an action related to the Loan Agreements in Nevada AND
4 took action against the MCFA entities by placing them on a-check based on the purported breach of
5 the same Loan Agreement that Fannie Mae sued in Nevada.

6 Additionally, forum selection clauses can only apply “so long as the agreement is reasonable
7 and just.” *Pal v. Hafterlaw, LLC*, 132 Nev. 1015, at *1 (Nev. App. 2016). Dismissal of the Master
8 Credit Facility Entities claims based on a permissive forum selection clause would be improper,
9 especially where, as here, such a result is inconsistent with Nevada law based on the requirement of
10 NRCP 13(a) that any claims against an opposing party must be raised in response to a complaint.
11 Fannie Mae chose to sue in Nevada on the Loan Agreements. By doing so, Fannie Mae consented to
12 the jurisdiction of the court over this matter, so it cannot choose to engage in discriminatory loan
13 servicing against the MCFA entities based on the same purported breach that it sued in Nevada while
14 evading liability by indiscriminately utilizing the forum selection clauses it drafted as a shield. It is
15 not just or reasonable to remove related counterclaims and to force the bifurcation of claims into
16 repetitive suits in multiple jurisdictions based simply on Fannie Mae’s whims, especially when arising
17 from Fannie Mae’s same misconduct against parties that it does not dispute are proper parties to this
18 case who have raised the same allegations based on the same purported default. *See Pal v. Hafterlaw,*
19 *LLC*, 132 Nev. 1015, at *1 (Nev. App. 2016) (*citing Tandy Comput. Leasing, a Div., of Tandy Elecs.,*
20 *Inc. v. Terina's Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8 (1989)).

21 Notably, in *Pal v. Hafterlaw*, the appellate court addressed whether, in response to a fee
22 dispute complaint, a malpractice claim could be brought as a counterclaim and whether Nevada was
23 the proper jurisdiction. As in *Pal*, NRCP 13(a) requires that “a party must raise in response to a
24 complaint any claim ‘the pleader has against any opposing party, if it arises out of the transaction or
25 occurrence that is the subject matter of the opposing party’s claim and does not require for its
26 adjudication the presence of third parties of whom the court cannot acquire jurisdiction.” *See id*
27 (failing to dismiss malpractice counterclaim filed in response to a fee dispute complaint despite the
28 assertion that claims were improperly raised with respect to related parties).

1 As such, it would not be just or reasonable to force bifurcation of related claims based on a
2 forum selection clause, when Fannie Mae chose to sue in Nevada, submitted to the jurisdiction of this
3 Court related to its conduct arising out of this suit, and is alleged to have engaged in discriminatory
4 lending practices against related entities based on the same purported breach, especially in light NRC
5 13(a)'s requirement that any claim against an opposing party be brought in the same action.

6 **D. 12 U.S.C. § 4617(j)(4) Does Not Bar Punitive Damages or Attorney Fees.**

7 FHFA argues that 12 U.S.C. § 4617(j)(4) bars Westland's request for punitive damages and
8 attorney's fees. This argument fails for three independent reasons.

9 *First*, neither punitive damages nor attorney's fees are "amounts in the nature of penalties or
10 fines" within the meaning of 12 U.S.C. § 4617(j)(4). FHFA assumes with little explanation that
11 punitive damages qualify as "penalties" under the statute. But the law frequently distinguishes
12 between "punitive damages" on the one hand and "penalties" on the other. *See, e.g.*, 18 Nev. Rev.
13 Stat. § 228.1116(1)(b) (attorney's contingency fee contract "[m]ust not be based on any amount
14 attributable to a fine or civil penalty, but may be based on an amount attributable to punitive
15 damages"); *Nevada Power Co. v. Eighth Judicial Dist.*, 120 Nev. 948, 961 (2004) (explaining in the
16 context of administrative enforcement action that "civil penalties" are "not equivalent" to "punitive
17 damages").

18 Although courts sometimes characterize punitive damages as "penalties," whether that term
19 is properly understood to encompass punitive damages depends on the context. The context here is a
20 statutory provision that is otherwise silent regarding the remedies available to private litigants who
21 sue FHFA. Rather than specifically addressing remedies in private civil suits like this one, the
22 balance of Section 4617(j)(4) immunizes FHFA from liability for "fines" and other punishments that
23 governments impose for various forms of misconduct, including failures "to pay any real property,
24 personal property, probate, or recording tax or any recording or filing fees when due." 12 U.S.C.
25 § 4617(j)(4). When read in context, the word "penalties" in the statute is thus most naturally
26 understood as limited to *punishments imposed by the government* and not to restrict the remedies
27 otherwise available to private parties in civil litigation.

1 This reading of Section 4617(j)(4) is reinforced by 12 U.S.C. § 4617(d)(3)(B), which
2 expressly limits FHFA’s liability for “punitive or exemplary damages” when it repudiates contracts.
3 Section 4617(d)(3)(B) would be entirely superfluous if Section 4617(j)(4)’s prohibition on
4 “penalties” encompassed punitive damages, thus violating “one of the most basic interpretive
5 canons” of construction. *Corley v. United States*, 556 U.S. 303, 314 (2009). The specific limitations
6 on civil remedies against FHFA that appear in Section 4617(d)(3)(B) must not be nullified by an
7 overbroad interpretation of the more general language that appears in Section 4617(j)(4). *See*
8 *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 556 U.S. 639, 645 (2012) (discussing the
9 “general/specific” canon).¹

10 FHFA cites a handful of cases in which courts have read the word “penalties” more broadly
11 to extend to claims for punitive damages. But none of the cases FHFA identifies grapple with the
12 statutory text, and in any event, the precedents do not uniformly favor FHFA’s interpretation. For
13 example, in *Higgins v. BAC Home Loans Servicing, LP*, 2014 WL 1332825, at *5 (E.D. Ky. March
14 31, 2014), the court distinguished between an “ordinary action for damages where exemplary or
15 punitive damages are awarded” and remedies that are “properly characterized as penal.” The court
16 explained that only “penal” remedies are “penalties” under Section 4617(j)(4) and held that a suit for
17 treble damages under a Kentucky statute could go forward. Likewise, here, the punitive damages
18 Westland seeks are not “penal,” so Section 4617(j)(4) does not apply.²

19 *Second*, Section 4617(j)(4) only limits when FHFA may “be liable” for penalties and fines,
20 and thus does not prevent the Court from using punitive damages or attorney’s fees as a basis for
21 offsetting Westland’s liability to Fannie Mae under the relevant Loan Agreements. Notably, certain
22 contractual rights “to offset or net out” payment obligations are among the contractual provisions
23

24
25 ¹ FHFA cannot avoid punitive damages under Section 4617(b)(3)(B) because under its own
26 regulations its authority to repudiate contracts had expired by the time of the events that gave rise to
this lawsuit. *See* 12 C.F.R. § 1237.5(b).

27 ² FHFA is on even weaker footing in arguing that an award of attorney’s fees would qualify
28 as an impermissible penalty under Section 4617(j)(4). Even assuming that punitive damages are
“penalties” within the meaning of the statute, an award of attorney’s fees is not. *See, e.g., Nat’l Fair
Housing Alliance v. Fannie Mae*, 2019 WL 3779531, at *6 (N.D. Cal. Aug. 12, 2019).

1 that FHFA cannot avoid during conservatorship. *See* 12 U.S.C. § 4617(d)(8)(E)(iii). Thus, to the
2 extent that Westland’s prayer for punitive damages and attorney’s fees is used as a basis for reducing
3 Westland’s contractual liability to the Plaintiffs, these remedies would not make FHFA “liable” for
4 anything.

5 *Third*, Section 4617(j)(4) immunizes “[t]he Agency” from liability for penalties and fines—a
6 term that the Housing and Economic Recovery Act elsewhere defines to include FHFA but not
7 Fannie Mae. *See* 12 U.S.C. § 4502(2) (“The term ‘Agency’ means the Federal Housing Finance
8 Agency established under section 4511 of this title.”). Thus, although FHFA cites non-binding
9 precedents from other jurisdictions that say otherwise, the better reading of the statutory text is that
10 Section 4617(j)(4) does not apply to Fannie Mae. That is what the court concluded in *Burke v.*
11 *Fannie Mae*, 221 F. Supp. 3d 707, 710 (E.D. Va. Dec. 6, 2016), *vacated upon settlement*, 2016 WL
12 7451624 (E.D. Va. Dec. 6, 2016), which is the most thorough and persuasive judicial treatment of
13 the relevant statutory text. This conclusion follows not only from Congress’s definition of “Agency”
14 but also its careful effort to distinguish throughout Section 4617 between “the Agency” and a
15 “regulated entity” in conservatorship or receivership. *See Burke*, 221 F. Supp. 3d at 710 (observing
16 that Section 4617 uses the term “Agency” 138 times and “regulated entity” 189 times and
17 consistently differentiates between the two terms). What is more, Section 4617(j) only applies to
18 cases “in which the Agency *is acting* as a conservator or receiver,” 12 U.S.C. § 4617(j)(1), and it is
19 undisputed that FHFA had no involvement in the events underlying this lawsuit until it belatedly
20 parachuted into the case in an effort to shield Fannie Mae from liability.

21 **E. Counterclaimants Validly Seek Attorneys’ Fees As Special Damages.**

22 Fannie Mae disputes “attorney’s fees for [the] contract-based claims” upon the assertion that
23 “no basis” was provided for such damages. (Br. at 17-18.) Notice of the basis for such fees is plead in
24 each claim, but to the extent that a further basis is required, Counterclaimants are entitled to attorneys’
25 fees as special damages.

26 In Nevada, attorney’s fees can be recovered as an element of consequential damage and may
27 be plead when foreseeably arising out of breach of contract or tortious conduct as special damages.
28 *Sandy Valley Associates v. Sky Ranch Estates Owners Assoc.*, 117 Nev. 948, 955, 35 P.3d 964, 968-69

1 (2001) (consolidating cases exploring the circumstances under which attorney's fees can be
2 recovered); NRC 9(g). Based on *Sandy Valley* and its progeny, attorney fees are available as special
3 damages when they are either: 1) the natural and proximate cause of injurious conduct, 2) related to
4 third-party actions, or 3) incurred to recover real or personal property or in clarifying or removing a
5 cloud upon title to property. *Id.*; *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151, 321 P.3d 875,
6 878 (2014) (clarifying the cloud to title basis includes claims other than slander of title, such as
7 declaratory judgment or equitable relief, as long as in the nature of slander of title). In reviewing the
8 relevant authority on the topic, the *Sandy Valley* court also pointed out several matters where
9 attorneys' fees as special damages were deemed to have been warranted. 117 Nev. 955, n.7.

10 For the first basis, an award of special damages based attorneys' fees was permitted when
11 incurred to obtain a restraining order that was necessary to remove a hotel from "National Defaulters
12 List." *Am. Fed'n of Musicians v. Reno's Riverside Hotel, Inc.*, 86 Nev. 695, 699, 475 P.2d 220, 222
13 (1970) disapproved of by *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948,
14 35 P.3d 964 (2001) (recognizing no statutory or rule basis existed for these attorneys' fees, and they
15 were damages). In that case, the hotel assumed an events contract from its predecessor that was not
16 fulfilled, the music federation demanded a default fee, the hotel refused to pay the default fee, the
17 hotel was placed on the federation's defaulters list, and the federation directed the local union to
18 advise musicians not to contract with the hotel further. *Id.* at 698. The Court found the federation's
19 tactics were a "coercive device" since no "no dispute existed between the new owner and its employed
20 musicians," and that Nevada has "denounced coercion of similar character" even in the face of an
21 "illusory pre-emption rule" based on federal National Labor Relations Act. *Id.* at 699. As such, the
22 Court found the attorneys' fee expenditure necessary and awarded fees as special damages. *Id.*

23 As to the second basis, shortly before *Sandy Valley*, the Court determined that attorneys' fees
24 were permitted to be recovered by a subcontractor as special damages against a school district. *Clark*
25 *County Sch. Dist. v. Rolling Plains Const., Inc.*, 117 Nev. 101, 102, 16 P.3d 1079, 1080
26 (2001), *disapproved of in part by Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117
27 Nev. 948, 35 P.3d 964 (2001) (recognizing no statutory or rule basis existed for these attorneys' fees,
28 and they were damages). In that case, despite no direct relationship between the subcontractor and the

1 school district, the Court found that when the school district breached its contract with its contractor,
2 and the contractor, in turn, breached its contract with the subcontractor, the subcontractors' attorneys'
3 fees were recoverable as special damages. *Id.*

4 The causes of actions in the present case have plead substantially similar allegations and have
5 sought attorneys' fees as special damages. In the first, second, third, fourth, and ninth causes of
6 action, like in *Reno's Riverside Hotel*, Westland has sought injunctive relief to *inter alia* be removed
7 from Fannie Mae's own "national defaulters list" known as a-check, and sought related compensatory
8 damages, including attorneys' fees as special damages due to Fannie Mae's and its servicer's coercive
9 conduct. (Counterclaim, ¶¶ 6, 260, 279, 280, 296-98, 300, 441, 453, 463, 540-41.) Additionally, like
10 in *Rolling Plains Const.*, in the fourth cause of action, Counterclaimants allege that Fannie Mae and
11 Grandbridge engaged in bad faith loan servicing based on the purported default arising from the Loan
12 Agreements and expanded that to a wider range of Westland entities who were not direct parties to the
13 Loan Agreements, but were harmed by Fannie Mae and Grandbridge's breach. Similar to the related
14 subcontractor, which felt the effects of the school district's default, attorneys' fees as special damages
15 for Fannie Mae's breach should be permitted for the Westland Credit Facility Entities and Westland
16 Security Entities. Finally, under the third basis, Westland is entitled to recover attorneys' fees, which
17 were required to be paid to obtain a recovery of their reserve funds that were improperly converted and
18 to remove the slander of title created by the Notice of Sale related to the real properties, as special
19 damages for the fifth, eighth, ninth, and tenth causes of action. On that basis, the motion to dismiss
20 should be denied as to Westland's contract-based attorneys' fees.

21 **F. Counterclaimants Validly Seek Attorneys' Fees As Special Damages.**

22 Fannie Mae's arguments in favor of a waiver of consequential damages are overstated. The
23 section and paragraph of the cited provision of the Loan Agreement show the language is limited to
24 situations that Fannie Mae is resorting to foreclosures and related accountings for collateral.
25 Specifically, each clause is within a two paragraph Waiver of Marshaling section of the Loan
26 Agreement and MCFA that Fannie Mae drafted. Waiver of marshaling relates to the waiver of a
27 specific equitable doctrine requiring that the lender proceed through each source of collateral before
28 proceeding to the next. The full text of the section makes clear that the cited provision is not intended

as a general waiver of consequential damages, which text states as follows:

Section 14.04 Waiver of Marshaling.

Notwithstanding the existence of any other security interests in the Mortgaged Properties held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Properties (or any part thereof) shall be subjected to the remedies provided in this Master Agreement, any other Loan Document or Applicable Law. Lender shall have the right to determine the order in which all or any part of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in any Mortgaged Property and who has actual or constructive notice of this Master Agreement waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Properties be sold in the inverse order of alienation or that any of the Mortgaged Properties be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by Applicable Law or provided in this Master Agreement or any other Loan Documents.

Lender shall account for any moneys received by Lender in respect of any foreclosure on or disposition of collateral hereunder and under the other Loan Documents provided that Lender shall not have any duty as to any collateral, and Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers. NONE OF LENDER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL BE RESPONSIBLE TO BORROWER (a) FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED PURSUANT TO A FINAL, NONAPPEALABLE COURT ORDER BY A COURT OF COMPETENT JURISDICTION, NOR (b) FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

Based on the full text of the two paragraphs, the Wavier of Marshaling section shows an intent that Fannie Mae and its principals not be held liable for damages when seeking recovery from collateral or in how the funds generated from a foreclosure are applied unless due to gross negligence or willful misconduct. Perhaps most insightful is the text of clause (a) of the last sentence, which addresses when Fannie Mae acts or fails to act “under any power of attorney or otherwise,” which in the context of general litigation would not make sense. As such, it seems clear that clause (b) is not separately severable and capable of providing a general waiver as to consequential damages. Moreover, this purported limitation on consequential damages does not apply to all conduct related to the entire Loan Agreement, and certainly does not apply to the retaliatory and discriminatory faith loan servicing against affiliated entities that occurred in this matter.

1 **G. To The Extent The Motion Is Granted In Any Part, Counterclaimants Seek Leave**
2 **to Amend.**

3 In *Cohen v. Mirage Resorts*, 119 Nev. 1, 22 (2003), the Nevada Supreme Court reviewed the
4 standard for a motion to dismiss under NRCP 12(b)(5) and stated:

5 When considering a motion to dismiss under NRCP 12(b)(5), a district court must
6 construe the complaint liberally and draw every fair inference in favor of the plaintiff.
7 A complaint should not be dismissed unless it appears to a certainty that the plaintiff
8 could prove no set of facts that would entitle him or her to relief. Moreover, when a
 complaint can be amended to state a claim for relief, leave to amend, rather than
 dismissal, is the preferred remedy.

9 *Id.* (citing *Capital Mortgage Co. Holding v. Hahn*, 101 Nev. 314, 315 (1985), *Edgar v. Wagner*, 101
10 Nev. 226, 228 (1985), and *Zulk-Josephs Co. v. Wells Cargo, Inc.*, 81 Nev. 163, 169-70 (1965)).

11 Thus, while Counterclaimants believe that the Counterclaim filed in this case adequately
12 pleads each claim asserted against Fannie Mae, if this Court should determine that there is any
13 deficiency in the pleading, then consistent with the requirements of *Cohen*, Counterclaimants move
14 and respectfully request permission to amend the complaint according to NRCP 15.

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IV. CONCLUSION

Based on the foregoing, the Court should **DENY** the joint Fannie Mae and FHFA Motion to Dismiss in Part Defendant's First Amended Answer and Amended Counterclaim.

DATED this 23rd day of November 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 23, 2021, a copy of the foregoing **OPPOSITION TO PLAINTIFF'S PARTIAL MOTION TO DISMISS DEFENDANT'S FIRST AMENDED ANSWER AND AMENDED COUNTERCLAIM**, was served on the parties listed below via electronic service through Odyssey to the following:

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EXHIBIT “1”

EXHIBIT “1”

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~~Plaintiffs~~ Westland Liberty Village, LLC & Westland
Village Square LLC, and Counterclaimants
Amusement Industry, Inc., Westland Corona LLC,
Westland Amber Ridge LLC, Westland Hacienda Hills
LLC, 1097 North State, LLC, Westland Tropicana Royale
LLC, Vellagio Apts of Westland LLC, The Alevy Family
Protection Trust, Westland AMT, LLC, AFT Industry NV,
LLC, A&D Dynasty Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC and
WESTLAND VILLAGE SQUARE, LLC,

Defendants.

CASE NO. A-20-819412-C

DEPT NO. 4

**FIRST AMENDED ANSWER TO
PLAINTIFF'S COMPLAINT, AND FIRST
AMENDED COUNTERCLAIM AND THIRD
PARTY COMPLAINT**

**EXEMPTION FROM ARBITRATION:
Title to Real Property and Declaratory Relief
requested via Counterclaim**

WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; ~~and~~ WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company; AMUSEMENT INDUSTRY, INC., a California Corporation; WESTLAND CORONA LLC, a Nevada Limited Liability Company; WESTLAND AMBER RIDGE LLC, a Nevada Limited Liability Company; WESTLAND HACIENDA HILLS LLC, a Nevada Limited Liability Company; 1097 NORTH STATE, LLC, a Delaware Limited Liability Company; WESTLAND TROPICANA ROYALE LLC, a Nevada Limited Liability Company; VELLAGIO APTS OF WESTLAND LLC, a Nevada Limited Liability Company; THE ALEVY FAMILY PROTECTION TRUST, a Nevada Irrevocable Trust; WESTLAND AMT, LLC, a Nevada Limited Liability Company; AFT INDUSTRY NV, LLC, a Nevada Limited Liability Company; and A&D DYNASTY TRUST, a Nevada Irrevocable Trust,

Counterclaimants,

vs.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, a federally-charted corporation, GRANDBRIDGE REAL ESTATE CAPITAL, LLC, a North Carolina Limited Liability Company, SHAMROCK PROPERTIES VI LLC, a Delaware limited liability company; SHAMROCK PROPERTIES VII LLC, a Delaware limited liability company; ND MANAGER LLC, a Delaware (Connecticut) limited liability company; SHAMROCK COMMUNITIES, LLC, a Delaware limited liability corporation; SHAMROCK COMMUNITIES MANAGEMENT LLC, a Connecticut limited liability company; SHAMROCK PROPERTY MANAGEMENT LLC, a Delaware limited liability company; MMM INVESTMENTS LLC, a Delaware limited liability company; ELLEN WEINSTEIN, an individual; HILARY DAVIDSON, an individual; JENNIFER WILDE, an individual; and DOES 1 through 100; and ROE CORPORATIONS 101 through 200, inclusive,

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Counter-Defendant.
WESTLAND LIBERTY VILLAGE, LLC, a Nevada Limited Liability Company; and WESTLAND VILLAGE SQUARE, LLC, a Nevada Limited Liability Company, — Third Party Plaintiffs,
vs.
GRANDBRIDGE REAL ESTATE CAPITAL, LLC, a North Carolina Limited Liability Company,
Third Party Defendants.

FIRST AMENDED ANSWER

Defendants, Westland Liberty Village, LLC (“Liberty LLC”) and Westland Village Square, LLC (“Square LLC” and in combination with Liberty LLC, “Defendants” or “Westland”), by and through their counsel of record, the Law Offices of John Benedict, answer Plaintiff’s Verified Complaint, and admits, denies and alleges, as follows:

Defendants deny each and every allegation of Plaintiff’s Complaint, except those allegations that are specifically admitted, qualified, or otherwise answered.

I. PARTIES, JURISDICTION AND VENUE

1. In response to the allegations contained in Paragraph 1 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore deny same.

2. In response to the allegations contained in Paragraph 2 of the Complaint, Defendants admit the allegations contained therein.

3. In response to the allegations contained in Paragraph 3 of the Complaint, Defendants admit the allegations contained therein.

1 4. In response to the allegations contained in Paragraph 4 of the Complaint,
2 Defendants admit the allegations related to the location of the properties and regarding expressly
3 agreeing to the jurisdiction and venue of this Court, but the remaining allegations are so vague
4 and ambiguous that they are unintelligible, and on that based Defendant denies the remaining
5 allegations contained therein.

6 5. In response to the allegations contained in Paragraph 5 of the Complaint,
7 Defendants admit the allegations contained therein.

8 6. In response to the allegations contained in Paragraph 6 of the Complaint,
9 Defendants admit the allegations contained therein.

10 **II. GENERAL ALLEGATIONS**

11 7. In response to the allegations contained in Paragraph 7 of the Complaint,
12 Defendants admit only that the Loan Agreement speaks for itself, and Defendants are without
13 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
14 contained in paragraph 7 of the Complaint, and therefore deny same.

15 8. In response to the allegations contained in Paragraph 8 of the Complaint,
16 Defendants admit only that the Loan Agreement and Note speak for themselves, and Defendants
17 are without knowledge or information sufficient to form a belief as to the truth of the remaining
18 allegations contained in paragraph 8 of the Complaint, and therefore deny same.

19 9. In response to the allegations contained in Paragraph 9 of the Complaint,
20 Defendants admit only that the Deed of Trust speaks for itself and the address of the real
21 property, and Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the remaining allegations contained in paragraph 9 of the Complaint, and therefore
23 deny same.

24 10. In response to the allegations contained in Paragraph 10 of the Complaint,
25 Defendants are not required to answer or respond to the allegations set forth therein because they
26 lack any substance, but to the extent there is any allegation in Paragraph 10 that requires a
27 response, such allegation is denied.

28

1 11. In response to the allegations contained in Paragraph 11 of the Complaint,
2 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
3 allegations contained therein, and therefore deny same.

4 12. In response to the allegations contained in Paragraph 12 of the Complaint,
5 Defendants admit only that the Assumption and Release Agreement speaks for itself, and
6 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
7 remaining allegations contained in paragraph 12 of the Complaint, and therefore deny same.

8 13. In response to the allegations contained in Paragraph 13 of the Complaint,
9 Defendants admit only that the Loan Agreement speaks for itself, and Defendants are without
10 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
11 contained in paragraph 13 of the Complaint, and therefore deny same.

12 14. In response to the allegations contained in Paragraph 14 of the Complaint,
13 Defendants admit only that the Loan Agreement and Note speak for themselves and Defendants
14 are without knowledge or information sufficient to form a belief as to the truth of the remaining
15 allegations contained in paragraph 14 of the Complaint, and therefore deny same.

16 15. In response to the allegations contained in Paragraph 15 of the Complaint,
17 Defendants admit only that the Deed of Trust speaks for itself, and Defendants are without
18 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
19 contained in paragraph 15 of the Complaint, and therefore deny same.

20 16. In response to the allegations contained in Paragraph 16 of the Complaint,
21 Defendants are not required to answer or respond to the allegations set forth therein because they
22 lack any substance, but to the extent there is any allegation in Paragraph 16 that requires a
23 response, such allegation is denied.

24 17. In response to the allegations contained in Paragraph 17 of the Complaint,
25 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
26 allegations contained therein, and therefore deny same.

27 18. In response to the allegations contained in Paragraph 18 of the Complaint,
28 Defendants admit only that the Assumption and Release Agreement speaks for itself, and

1 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations contained in paragraph 18 of the Complaint, and therefore deny same.

3 19. In response to the allegations contained in Paragraph 19 of the Complaint,
4 Defendants admit only that each Deed of Trust speaks for itself, and Defendants are without
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 contained in paragraph 18 of the Complaint, and therefore deny same.

7 20. In response to the allegations contained in Paragraph 20 of the Complaint,
8 Defendants admit only that each Deed of Trust speaks for itself, and Defendants deny the
9 remaining allegations contained in paragraph 20 of the Complaint.

10 21. In response to the allegations contained in Paragraph 21 of the Complaint,
11 Defendants admit only that the quoted text is contained in each Deed of Trust and that each Deed
12 of Trust speaks for itself, and Defendants deny the remaining allegations contained in paragraph
13 21 of the Complaint.

14 22. In response to the allegations contained in Paragraph 22 of the Complaint,
15 Defendants admit only that the quoted texted is contained in each Loan Agreement and that each
16 Loan Agreement speaks for itself, and Defendants deny the remaining allegations contained in
17 paragraph 22 of the Complaint.

18 23. In response to the allegations contained in Paragraph 23 of the Complaint,
19 Defendants admit only that f3 was onsite at each real property purportedly to conduct a Property
20 Condition Assessment, and Defendants deny the remaining allegations contained in paragraph 23
21 of the Complaint.

22 24. In response to the allegations contained in Paragraph 24 of the Complaint,
23 Defendants deny the allegations contained therein.

24 25. In response to the allegations contained in Paragraph 25 of the Complaint,
25 Defendants deny the allegations contained therein.

26 26. In response to the allegations contained in Paragraph 26 of the Complaint,
27 Defendants deny the allegations contained therein.

28

1 27. In response to the allegations contained in Paragraph 27 of the Complaint,
2 Defendants deny the allegations contained therein.

3 28. In response to the allegations contained in Paragraph 28 of the Complaint,
4 Defendants admit only that the quoted text is contained in each Loan Agreement and that each
5 Loan Agreement speaks for itself, and Defendants deny the remaining allegations contained in
6 paragraph 28 of the Complaint.

7 29. In response to the allegations contained in Paragraph 29 of the Complaint,
8 Defendants deny the allegations contained therein.

9 30. In response to the allegations contained in Paragraph 30 of the Complaint,
10 Defendants admit only that the quoted text is contained in each Loan Agreement and that each
11 Loan Agreement speaks for itself, and Defendants deny the remaining allegations contained in
12 paragraph 30 of the Complaint.

13 31. In response to the allegations contained in Paragraph 31 of the Complaint,
14 Defendants deny the allegations contained therein.

15 32. In response to the allegations contained in Paragraph 32 of the Complaint,
16 Defendants deny the allegations contained therein.

17 33. In response to the allegations contained in Paragraph 33 of the Complaint,
18 Defendants deny the allegations contained therein.

19 34. In response to the allegations contained in Paragraph 34 of the Complaint,
20 Defendants deny the allegations contained therein.

21 **III. CLAIMS FOR RELIEF**

22 **FIRST CAUSE OF ACTION**

23 **(Specific Performance)**

24 35. In response to the allegations contained in Paragraph 35 of the Complaint,
25 Defendants restate and incorporate by reference their answers to paragraphs 1 through 34 of
26 Plaintiff's Complaint as if fully set forth herein.

27 36. In response to the allegations contained in Paragraph 36 of the Complaint,
28 Defendants deny the allegations contained therein.

1 37. In response to the allegations contained in Paragraph 37 of the Complaint,
2 Defendants deny the allegations contained therein.

3 38. In response to the allegations contained in Paragraph 38 of the Complaint,
4 Defendants deny the allegations contained therein.

5 39. In response to the allegations contained in Paragraph 39 of the Complaint,
6 Defendants deny the allegations contained therein.

7 40. In response to the allegations contained in Paragraph 40 of the Complaint,
8 Defendants deny the allegations contained therein.

9 41. In response to the allegations contained in Paragraph 41 of the Complaint,
10 Defendants deny the allegations contained therein.

11 42. In response to the allegations contained in Paragraph 42 of the Complaint,
12 Defendants deny the allegations contained therein.

13 **SECOND CAUSE OF ACTION**

14 **(Petition for Appointment of Receiver)**

15 43. In response to the allegations contained in Paragraph 43 of the Complaint,
16 Defendants restate and incorporate by reference their answers to paragraphs 1 through 42 of
17 Plaintiff's Complaint as if fully set forth herein.

18 44. In response to the allegations contained in Paragraph 44 of the Complaint,
19 Defendants deny the allegations contained therein.

20 45. In response to the allegations contained in Paragraph 45 of the Complaint,
21 Defendants deny the allegations contained therein.

22 46. In response to the allegations contained in Paragraph 46 of the Complaint,
23 Defendants deny the allegations contained therein.

24 47. In response to the allegations contained in Paragraph 47 of the Complaint,
25 Defendants deny the allegations contained therein.

26 48. In response to the allegations contained in Paragraph 48 of the Complaint,
27 Defendants are without knowledge or information sufficient to form a belief as to the truth of the
28 allegations contained therein, and therefore deny same.

1 49. In response to the allegations contained in Paragraph 49 of the Complaint,
2 Defendants deny the allegations contained therein.

3 50. In response to the allegations contained in Paragraph 50 of the Complaint,
4 Defendants deny the allegations contained therein.

5 51. In response to the allegations contained in Paragraph 51 of the Complaint,
6 Defendants deny the allegations contained therein.

7 52. In response to the allegations contained in Paragraph 52 of the Complaint,
8 Defendants deny the allegations contained therein.

9 53. In response to the allegations contained in Paragraph 53 of the Complaint,
10 Defendants deny the allegations contained therein.

11 **AFFIRMATIVE DEFENSES**

12 As separate affirmative defenses to Plaintiff's Complaint, Westland alleges as follows:

13 **FIRST AFFIRMATIVE DEFENSE**

14 ~~Plaintiff's Complaint, and each and every allegation contained therein, fails to state a~~
15 ~~claim upon which relief can be granted.~~ Withdrawn [but numbering kept to maintain consistency]

16 **SECOND AFFIRMATIVE DEFENSE**

17 Plaintiff has waived its right to assert every cause of action set forth in Plaintiff's
18 Complaint through its conduct and actions.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Plaintiff is estopped from obtaining the relief sought in Plaintiff's Complaint.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 If Plaintiff suffered any damages ~~or less~~, which is expressly denied, then Westland
23 alleges that persons, both served and unserved, named and unnamed, in some manner or
24 percentage were responsible for Plaintiff's damages.

25 ///

27 **FIFTH AFFIRMATIVE DEFENSE**

1 Westland alleges that any damage allegedly suffered by Plaintiff as asserted~~Heged~~ in its
2 Complaint was the result of Plaintiff's acts, omissions and failure to satisfy the conditions of the
3 contracts s it sues upon, which resulted in breaching the contracts and not the result of acts or
4 omissions of Westland.

5
6 **SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiff's allegations contained in Plaintiff's Complaint, and each of them, are barred by
8 the doctrine of laches in that Plaintiff has unreasonably delayed in bringing these claims, and
9 said delays have caused prejudice to Westland.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 No relief may be obtained under the Complaint by reason of the doctrine of unclean
12 hands and by reason of the unconscionability of Plaintiff's acts and claims.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Westland acted in good faith and dealt fairly and responsibly with Plaintiff, based on all
15 relevant facts and circumstances known by them at the time Westland acted. However, Plaintiff
16 and its agents have acted in bad faith, including but not limited to filing an improper notice of
17 default and intention to sell ("NOD").

18 **NINTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims are barred, in whole or in part, because in the event the Court
20 determines the language of the applicable contractual documents support the construction
21 Plaintiff now places on them, the Court should reform such language due to the mutual mistake
22 of the parties, their assignors and predecessors-in-interest, regarding the construction the Court
23 would make of such language.

24 **TENTH AFFIRMATIVE DEFENSE**

25 Plaintiff's claims are barred, in whole or in part, by the failure of conditions precedent or
26 other anticipated incidents whose occurrence or non-occurrence were assumptions of the parties'
27 agreement and understanding.

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ELEVENTH AFFIRMATIVE DEFENSE

The injury or damage purportedly suffered by Plaintiff, if any, would be adequately compensated in an action at law for damages, and accordingly Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

TWELFTH AFFIRMATIVE DEFENSE

No relief may be obtained under the Complaint by reason of Plaintiff’s failure to do equity in the matters alleged in the Complaint, including, but not limited to, failing to make a valid and viable statement of the indebtedness due and of the value of the improvements made by Westland to the real property in this litigation.

THIRTEENTH AFFIRMATIVE DEFENSE

No relief may be obtained under the Complaint by Plaintiff by reason of the prohibitions against enforcement of unconscionable contracts, and prohibition on receipt of benefits accruing through unconscionable conduct, and the unconscionability of Plaintiff’s acts and claims.

FOURTEENTH AFFIRMATIVE DEFENSE

Having prevented and hindered Westland from performing under the applicable contracts and from obtaining the benefits thereof, Plaintiff would be unjustly enriched if allowed to enforce the contracts or obtain damages for the alleged breaches in this Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

Prior to any of the acts of Westland complained of in the Complaint, Plaintiff had breached the contracts and obligations on which Plaintiff seeks damages. Plaintiff’s breaches thus prevented Westland’s performance and excused any obligation to perform that might be said to be resting on Westland. Plaintiff’s breach occurred when Westland was performing as the parties had expressly agreed, and the breach constituted a breach of Plaintiff’s obligations in violation of contract and of the inherent covenant of good faith and fair dealing.

SIXTEENTH AFFIRMATIVE DEFENSE

1 Plaintiff is barred from recovering any damages or any other relief by reason of the
2 failure of consideration that defeats the effectiveness of the contract between the parties.

3 ///

4 SEVENTEENTH AFFIRMATIVE DEFENSE

5 As a result of Plaintiff's failure to conduct a reasonable inspection at the time of the
6 initial loan and prior to Westland's assumption of the loan agreements, Plaintiff failed to obtain
7 reserves based on the same standard used in September 2019, and through no fault of Westland,
8 the purposes recognized by both Plaintiff and Westland as the basis for the contract, which was a
9 loan of funds, would be fundamentally frustrated and defeated. Accordingly, Plaintiff's claims
10 are without merit.

11 EIGHTEENTH AFFIRMATIVE DEFENSE

12 The Complaint constitutes a pleading per Nevada Rule of Civil Procedure 11 and/or NRS
13 18.010(2)(b) which is submitted for an improper purpose; is not warranted by existing law or by
14 a non-frivolous argument for an extension, modification, or reversal of existing law or the
15 establishment of new law; contains allegations and other factual contentions without evidentiary
16 support or which are likely not to have evidentiary support after a reasonable opportunity for
17 further investigation or discovery; and/or which is brought without any basis and/or to harass
18 Westland. The Complaint thus violates Rule 11 and/or NRS 18.010(2)(b).

19 NINETEENTH AFFIRMATIVE DEFENSE

20 ~~It has been necessary for Westland to retain the services of an attorney to defend against~~
21 ~~Plaintiff's claims, and Westland is thereby entitled to recover reasonable attorney's fees and~~
22 ~~costs in defending this matter.~~Omitted [but numbering remains for consistency]

23 TWENTIETH AFFIRMATIVE DEFENSE

24 Westland affirmatively alleges that they have not had a reasonable opportunity to
25 complete discovery and facts hereinafter may be discovered which may substantiate other
26 affirmative defenses not listed herein. By this Answer, Westland waives no affirmative defenses
27
28

1 and reserves the right to amend this Answer to insert any subsequently discovered affirmative
2 defenses.

3 **WHEREFORE**, Westland prays for judgment as follows:

4 1. That the Court make a judicial determination that Plaintiff is not entitled to the
5 specific performance requested.

6 2. That Plaintiff takes nothing by its Complaint and that this action be dismissed in
7 its entirety with prejudice;

8 3. For costs incurred in defense of this action;

9 4. For reasonable attorneys' fees incurred in defense of this action; and

10 5. For such other relief as the Court may deem just and proper.

11 Dated: August ~~31~~__, ~~2020~~2021

LAW OFFICES OF JOHN BENEDICT

/s/ John Benedict

John Benedict (NV Bar No. 5581)

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WESTLAND REAL ESTATE GROUP

/s/ John W. Hofsaess

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DICKINSON WRIGHT PLLC

/s/ John P. Desmond

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Attorneys for Defendants/Counterclaimants
Westland Liberty Village, LLC & Westland Village
Square LLC, and Counterclaimants Amusement
Industry, Inc., Westland Corona LLC, Westland
Amber Ridge LLC, Westland Hacienda Hills LLC,
1097 North State, LLC, Westland Tropicana Royale
LLC, Vellagio Apts of Westland LLC, The Alevy
Family Protection Trust, Westland AMT, LLC, AFT
Industry NV, LLC, A&D Dynasty Trust

FIRST AMENDED COUNTERCLAIM

Defendants/Counterclaimants, Westland Liberty Village, LLC (“Liberty LLC”), ~~and~~
Westland Village Square, LLC (“Square LLC” and in combination with Liberty LLC,
“Westland”), Amusement Industry, Inc. (“Amusement”), Westland Corona LLC (“Corona”),
Westland Amber Ridge LLC (“Amber”), Westland Hacienda Hills LLC (“Hacienda”), 1097
North State, LLC (“1097 North”), Westland Tropicana Royale LLC (“Tropicana”), and Vellagio
Apts of Westland LLC (“Vellagio” and in combination with Amusement, Corona, Amber,
Hacienda, 1097 North, and Tropicana, the “Westland Credit Facility Entities”), The Alevy
Family Protection Trust (“AFP Trust”), Westland AMT, LLC (“Westland AMT”), AFT Industry
NV, LLC (“AFT NV”), A&D Dynasty Trust (“Dynasty Trust” and in combination with AFP
Trust, Westland AMT, AFT NV, and Amusement, the “Westland Securities Entities”), ~~and in~~
~~combination with Liberty LLC,~~ and collectively Westland, Westland Credit Facility Entities and
Westland Securities Entities, are referred to herein as the “Counterclaimants”) ~~or “Westland”),~~
through their attorneys of record, the Law Offices of John Benedict, John W. Hofsaess, and
Dickinson Wright PLLC, for their Counterclaim against Plaintiff/Counter-Defendant Federal
National Mortgage Association (“Fannie Mae”), Grandbridge Real Estate Capital, LLC
(formerly Cohen Financial, Suntrust Bank, and Truist Bank, but for ease of reference, regardless
of the time period, it shall be referred to solely as “Grandbridge” or “Servicer,” and together with
“Fannie Mae” as the “Lenders”)¹, Shamrock Properties VI LLC (“Sham VI”), Shamrock
Properties VII LLC (“Sham VII”), ND Manager LLC (“NDM”), Shamrock Communities LLC
 (“Sham C”); Shamrock Communities Management LLC (“Sham CM”), Shamrock Property
Management LLC (“Sham PM”), MMM Investment LLC (“MMM LLC”), Ellen Weinstein
 (“Weinstein”), Hilary Davidson aka Hilary Burt (“Davidson”), Jennifer Wilde (“Wilde,” and
together with Sham VI, Sham VII, NDM, Sham C, Sham CM, Sham PM, MMM LLC,

¹ While the Servicer has had multiple name changes, including based on a merger with BB&T Bank, the employees “servicing” this loan have continuously remained the same regardless of the name of the entity.

Weinstein, and Davidson, collectively referred to herein as the “Sham Defendants”), Does 1 through 100, and Roe Corporations 101 through 200, allege as follows²:

I. STATEMENT OF THE CASE

1. This ~~ease~~Counterclaim arises because Fannie Mae and its agents, including Grandbridge ~~Real Estate Capital, LLC (formerly Cohen Financial, Suntrust Bank, and Truist Bank, but for ease of reference, regardless of the time period, it shall be referred to solely as “Grandbridge” or “Servicer”),~~³ have filed an improper Notice of Default and Intent to Sell (“NOD”), and have thus caused improper non-judicial foreclosure proceedings to be commenced. This illegal conduct *threatens to foreclose on Westland’s two multifamily housing communities (the “Properties”) based on insupportable non-financial defaults*, which, despite multiple requests by Westland, have never been substantiated, *and to be put simply, were manufactured, by Fannie Mae’s Servicer*. To be clear, all monthly debt service payments have been timely made on this loan. In fact, ~~since-between~~ February 2020, when Servicer abruptly ceased sending loan statements, ~~and December 2020,~~ Counterclaimants ~~have actually~~ overpaid their monthly debt service obligation payments by over \$~~4~~500,000. Moreover, Counterclaimants have over \$20 million of equity in the Properties, and therefore, there is absolutely no good faith basis for the noticed foreclosure sales or for any assertion that Fannie Mae or Grandbridge has a risk of loss of assets or the need for an appointment of a receiver.

2. Instead, in reality, the Properties were only in a distressed condition, *prior* to Westland’s acquisition of the two properties in August 2018.⁴ Immediately before Westland bought the Properties, the Properties were in disrepair, had management that misrepresented the true occupancy rates at the properties, and had such a high rate of serious crimes that the Las Vegas Metropolitan Police Department even sent a Notice and Declaration of Chronic Nuisance

²-As noted in the Third Party Complaint below, the general allegations contained in this Counterclaim also form the general allegations for the causes of action asserted in the Third Party Complaint, and thus there are references to both the Counterclaim Defendant and the Third Party Defendant herein.

³-While the Servicer has had multiple name changes, including based on a merger with BB&T Bank, the employees “servicing” this loan have continuously remained the same regardless of the name of the entity.

⁴ Even when Fannie Mae owned the Properties during 2014 after a foreclosure, and the Properties were operated by a receiver, the Properties were crime-ridden.

1 (the “Nuisance Notice”) to address the criminal activity *at that time*.⁵ Still, in late 2017, despite
2 the poor condition of the Properties, Delegated Underwriting and Servicing (“DUS”) lender/loan
3 servicer Grandbridge⁶ made an initial loan on the properties. Upon information and belief that
4 loan never should have been made under Fannie Mae’s lending guidelines.

5 3. Compounding matters, when the initial loan documents were signed, Grandbridge
6 used a local office of CBRE to conduct a property condition assessment (“PCA”) and based
7 thereon, only required a combined total deposit of \$560,187.00 for the replacement reserve and
8 repair reserve accounts at both Properties, plus a small addition to the monthly debt service. In
9 August 2018, those reserve accounts were reduced to approximately \$143,000⁷ when the loan
10 was assumed by Westland, and the same monthly debt service additions were maintained. At
11 that point Grandbridge also made an explicit representation in its loan assumption letter that
12 “after a thorough review and analysis of the Proposed Borrower’s financial and managerial
13 capacity, the Assumption has been approved on the following terms: . . . No change to the
14 Replacement Reserve” and “No Change to the Required Repair Reserve.” The statement was
15 either a negligent misrepresentation based on absence of any adequate review, or made
16 fraudulently to induce Westland to sign the assumption, *because only one year later*,
17 Grandbridge sent its Notice of Demand seeking to have Westland deposit another \$2.7-85
18 million into the reserves.

19 4. As such, in July 2019, Westland was taken completely by surprise, when after it
20 had: invested over \$20 million of its own cash to purchase the Properties, cleaned up the crime
21 problem, spent approximately \$1.8 million in capital improvements,⁸ installed competent

22 ⁵ The Nuisance Notice (Exhibit A) provides it was sent because the two properties had generated over 1,000 calls for
23 service to the police department in the six-month period between September 28, 2017 and April 4, 2018. As of the
24 date of the April 4, 2018 notice, unless crime was abated, the matter would be referred to the District Attorney, and a
Complaint would be filed seeking “to secure and close the property until the nuisance is abated.” Under current
ownership, the calls decreased to 5% of that amount by July 2019, and now rarely include violent offenses.

25 ⁶ A DUS lender is able to make loans without Fannie Mae’s prior approval.

26 ⁷ While there was approximately an additional \$545,000 in escrow for the Liberty Property, those funds were
27 separately deposited insurance proceeds that were earmarked for use in rebuilding two apartment buildings that were
28 completely destroyed by fires in April 2018 and May 2018, after the initial the initial loans were taken out. Those
building have since been fully rebuilt, but Fannie Mae and Grandbridge continue to hold those funds.

⁸ Based on Westland’s efforts and investment, the condition of the Properties only continues to improve. In the year

1 management, and acquired an adjacent parcel to further stabilize the Properties with local
2 community services,⁹ Grandbridge then improperly and without justification sought a PCA
3 conducted by the Texas-based f3, Inc. which employed a heightened standard. Grandbridge, and
4 Fannie Mae acting through Servicer, then bootstrapped that assessment into a demand to place an
5 additional \$2.7-85 million into the reserve accounts Servicer maintained. To be blunt, the PCAs
6 should not have even been performed, because after Westland's purchase of the Properties the
7 condition of the Properties improved, not deteriorated, which meant that the Servicer had no
8 right to demand a property assessment, let alone any subsequent demand for additional reserves
9 based on that PCA. Essentially, Westland's efforts to work with Fannie Mae and its Servicer in
10 good faith on this loan, have led to the first NOD that any Westland--related entity has ever
11 received, even though: ~~the Westland~~ ~~Real~~ ~~eEstate~~ ~~gGroup~~ has been in operation for over 50
12 years, has a loan portfolio with Fannie Mae amounting to approximately \$300 million,
13 Westland's efforts have improved the lives of the diverse working class families who reside in
14 the over 10,000 multifamily housing units that Westland Real Estate Group serves in the Las
15 Vegas market alone, and *Westland has timely made every monthly debt service payment related*
16 *to this loan.*

17 5. Moreover, after declaring a default in December 2019, Lenders began not only to
18 improperly service the two loans related to the Liberty Village and Village Square properties, but
19 Lenders also began to discriminate against other Westland-related entities based solely on
20 Westland's failure to accede to Lenders' unilateral modification of the Loan Agreements by
21 demanding a \$2.85 million reserve increase, and then filing the NOD when Westland did not
22 capitulate.

23 _____
24 since the PCA occurred, Westland has poured over an *additional \$1.7 million* into capital expenditures and related costs at the Properties.

25 ⁹ In July 2019, a Westland associated entity, AF Properties 2015 LLC, signed a purchase and sale agreement for the
26 adjacent retail properties at 3435-3455 N. Ellis Blvd. The parcels are largely undeveloped, with only a bar and
27 liquor store onsite, and based on our management team's assessment were a magnet that drew the criminal element
28 to the neighborhood. To neutralize the negative influence of that site, Westland purchased the parcel, and is working with the Office of the County Commissioner to build local community-based resources at the site, which would serve the Properties and be attractive to working class families. Proposals being investigated include building a police substation and/or day care center.

1 6. After the NOD, Fannie Mae improperly placed the Westland affiliates into a-
2 check status, meaning they could not borrow from lenders whose loans were securitized by
3 Fannie Mae, and that loans already sold to Fannie Mae with borrow-up provisions were locked
4 out, which meant that in this case Westland's safety net – a nearly \$30M credit facility was
5 suspended. Specifically, those Westland-related entities whose borrow up loan was locked out
6 included the Credit Facility Entities, who had applied for a credit facility that would be funded
7 by Fannie Mae, had already been charged fees related to the issuance of that credit facility, had
8 been approved to receive funds via the credit facility, and had their real property subject to liens
9 in connection with that credit facility. However, in February 2020, when it was time for Fannie
10 Mae to disburse funds to the Credit Facility Entities, Fannie Mae refused to do so. Upon
11 information and belief, the reason for refusing to adhere to the credit facilities terms as had been
12 promised was the purported default related to the Liberty Village and Village Square loans.
13 Additionally, Fannie Mae improperly retaliated against other Westland-related entities by adding
14 them to its "a-check" list of borrowers to whom Fannie Mae's servicing agents and DUS lenders
15 were unable to write new or refinance loans on behalf of Fannie Mae. As a result of Fannie
16 Mae's conduct, in March 2020, Counterclaimants incurred large direct losses when the financial
17 markets were adversely affected by the threat of COVID-19, and contrary to the terms of the
18 credit facility Fannie Mae refused to make the promised funds available to the Credit Facility
19 Entities, despite that Counterclaimants had relied on the availability of the funds promised in the
20 credit facility to provide a safety net in the event of an economic downturn.

21 7. As such, ~~Counterclaimants Westland~~ wasere required to bring this Counterclaim
22 ~~and the Third Party Complaint below~~ to prevent Fannie Mae's pending foreclosure, ~~and~~ to
23 preserve the Properties along with the vibrant communities ~~they Westland~~ haves established, to
24 prevent Fannie Mae from being unjustly enriched, and further to prevent it from taking any
25 adverse action against any Westland-related entity on other loans due to the purported default
26 that arose from failing to deposit an additional \$2.49 million into the reserve escrow accounts,
27 including for example by improperly discriminating against the Counterclaimants on new loans
28 or failing to honor loan-related disbursement requests.

1 8. In addition to the claims against Lenders, this Counterclaim raises claims against
2 the Sham Defendants, which are the entities and principals who sold Westland the Properties.

3 9. The claims against the Sham Defendants concern the omissions and material
4 misrepresentations on the financial statements and accounting records of Sham VI and Sham VII
5 that resulted in the overpayment of more than \$10 million from Liberty LLC, Village LLC and
6 Amusement for the purchase of the Liberty Property and the Square Property, from Weinstein,
7 her affiliated entities, and the shareholders of Sham VI and Sham VII.

8 10. On August 28, 2018, Counterclaimants paid the Sham Defendants \$60.3 million
9 for the purchase of the two residential communities with a total of 1129 apartments based on the
10 documents from the Sham Defendants representing those communities had a combined
11 occupancy rate of 84%. However, after Closing Westland discovered that the true occupancy
12 rate of the Properties was much lower, because the reported occupancy had been inflated by
13 nefarious practices, such as failing to evict non-rent paying tenants while misreporting that
14 income continued to be generated from those same apartments, providing financial reporting in
15 due diligence that was materially misleading by failing to list any “noncurrent” tenants within
16 delinquency reports and aging summaries, failing to make repairs in excess of ordinary wear and
17 tear or habitability-related conditions in apartments where tenants resided, and engaging in
18 wholesale shredding of business records immediately prior to the Closing of the sale of the
19 Properties in an attempt to prevent Westland from discovering the Properties true financial state.

20 11. The harmful effects of such practices not only resulted in a misrepresentation of
21 the value of the Properties based on a reduced stream of income being generated, but also meant
22 that Westland was forced to incur the costs associated with performing a substantially greater
23 number of evictions of those non-rent paying tenants, increased costs to restore the units to rent-
24 ready condition, and costs associated with a purported default Lenders asserted based on a
25 purported deterioration of the condition of the Mortgaged Property related to a decline in
26 occupancy.

27 12. The Sham Defendants had a clear financial incentive to not evict tenants, because
28 the Purchase and Sale Agreements provided that the Sham Defendants’ were obligated to restore

1 any vacant units to “rent ready” condition and to maintain conditions in rented apartments that
2 were in excess of ordinary wear and tear, and thus the Sham Defendants would have incurred a
3 substantial additional cost if the Sham Defendants had properly removed those occupants and
4 performed the repairs needed to restore those apartments to rent ready condition.

5 13. Moreover, the effects of fraud have been magnified by the Sham Defendants’
6 requirement that Westland agree to assume their loans with Lenders, because when Westland
7 advised Lenders of the true state of the Properties’ occupancy, it resulted in a purported default
8 being declared on the Loan Agreements, despite that after the purchase Counterclaimants spent
9 millions of dollars to rehabilitate the conditions at the Properties.

10 **II. PARTIES**

11 4.14. Counterclaimant ~~and Third Party Plaintiff~~, Westland Liberty Village, LLC dba
12 Liberty Village Apartment Homes (“Liberty LLC”) is and at all times herein mentioned ~~is~~ was a
13 Nevada Limited Liability Company, ~~which conducted business in and was the owner of real~~
14 property located in Clark County, Nevada.

15 5.15. Counterclaimant ~~and Third Party Plaintiff~~, Westland Village Square, LLC dba
16 Village Square Apartment Homes (“Square LLC”) is and at all times herein mentioned ~~is~~ was a
17 Nevada Limited Liability Company, ~~which conducted business in and was the owner of real~~
18 property located in Clark County, Nevada.

19 16. Counterclaimant Amusement Industry, Inc. dba Westland Real Estate Group
20 (“Amusement”) is and at all times herein mentioned was a California Corporation.

21 17. Counterclaimant Westland Corona, LLC dba Corona Del Sol Apartments
22 (“Corona”) is and at all times herein mentioned was a Nevada Limited Liability Company, which
23 conducted business in and was the owner of real property located in Clark County, Nevada.

24 18. Counterclaimant Westland Amber Ridge, LLC dba Amber Ridge Apartments
25 (“Amber”) is and at all times herein mentioned was a Nevada Limited Liability Company, which
26 conducted business in and was the owner of real property located in Clark County, Nevada.

27 19. Counterclaimant 1097 North State, LLC (“1097 North”), is and at all times herein
28 mentioned was a Delaware Limited Liability Company.

1 20. Counterclaimant Westland Hacienda Hills, LLC dba Hacienda Hills Apartments
2 ("Hacienda") is and at all times herein mentioned was a Nevada Limited Liability Company,
3 which conducted business in and was the owner of real property located in Clark County,
4 Nevada.

5 21. Counterclaimant Westland Tropicana Royale, LLC dba Tropicana Royale
6 Apartments ("Tropicana") is and at all times herein mentioned was a Nevada Limited Liability
7 Company, which conducted business in and was the owner of real property located in Clark
8 County, Nevada.

9 22. Counterclaimant Vellagio Apts of Westland LLC dba Vellagio Apartments
10 ("Vellagio") is and at all times herein mentioned was a Nevada Limited Liability Company,
11 which conducted business in and was the owner of real property located in Clark County,
12 Nevada.

13 23. Counterclaimant The Alevy Family Protection Trust ("AFP Trust"), is and at all
14 times herein mentioned was a Nevada Irrevocable Trust, which conducted business in and
15 through its entity membership interests was the holder of a beneficial interest in real property
16 located in Clark County, Nevada. AFP Trust is a guarantor of a real estate loan underwritten and
17 secured by real property located in Clark County, Nevada.

18 24. Counterclaimant Westland AMT, LLC ("Westland AMT"), is and at all times
19 mentioned herein was a Nevada Limited Liability Company.

20 25. Counterclaimant AFT Industry NV, LLC ("AFT NV"), is and at all times
21 mentioned herein was a Nevada Limited Liability Company. AFT NV is a guarantor of a real
22 estate loan underwritten and secured by real property located in Clark County, Nevada.

23 26. Counterclaimant A&D Dynasty Trust ("Dynasty Trust"), is and at all times
24 mentioned herein was a Nevada Irrevocable Trust, which conducted business in and through its
25 entity membership interests was the owner of real property located in Clark County, Nevada.
26 Dynasty Trust is a guarantor of a real estate loan underwritten and secured by real property
27 located in Clark County, Nevada.

1 ~~6.27.~~ Counter-Defendant, Federal National Mortgage Association, is a federally chartered
2 corporation (“Fannie Mae”), which at all times mentioned herein has done business in the State
3 of Nevada.

4 ~~7.28. Third Party Defendant~~Counterdefendant, Grandbridge Real Estate Capital, LLC,
5 is a North Carolina Limited Liability Company (formerly known as Cohen Financial, Suntrust
6 Bank, and Truist Bank, but for ease of reference, regardless of the time period, it shall be
7 referred to solely as “Grandbridge” or “Servicer”), which at all times mentioned herein has done
8 business in the State of Nevada.

9 29. All of the acts or failures to act herein were duly performed by and attributable to
10 Counter-Defendant or those acting on Counter-Defendant’s behalf, who each acted as agent,
11 employee, or under the direction and/or control of Counter-Defendant. Said acts or failures to act
12 were within the scope of said agency and/or employment, and Counter-Defendant ratified the
13 acts and omissions by such parties, including ~~third-party-counter~~defendant Grandbridge and its
14 employees. Whenever and wherever reference is made in this Complaint to any acts by Counter-
15 Defendant, such allegations and references shall also be deemed to mean the acts of Counter-
16 Defendant and ~~third-party-defendant~~Grandbridge acting individually, jointly or severally.

17 30. Counterclaimants are informed and believe and thereupon allege that, at all times
18 material herein, Counterdefendant Shamrock Properties VI LLC dba Liberty Village Apartments
19 (hereinafter “Sham VI”) is a Delaware limited liability company doing business in Clark County,
20 State of Nevada. At the time of the events in question, Sham VI was the owner of an interest in
21 real property located in Clark County, Nevada.

22 31. Counterclaimants are informed and believe and thereupon allege that, at all times
23 material herein, Counterdefendant Shamrock Properties VIII dba Village Square Apartments
24 (hereinafter “Sham VII”) is a limited liability company doing business in Clark County, State of
25 Nevada. At the time of the events in question, Sham VII was the owner of an interest in real
26 property located in Clark County, Nevada.

27 32. Counterclaimants are informed and believe and thereupon allege that, at all times
28 material herein, Counterdefendant Sham VI owned and/or operated and/or managed certain

1 property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115, in Clark County, Nevada, and
2 commonly referred to as Liberty Village, Liberty Village Apartments, and Shamrock Properties.

3 33. Counterclaimants are informed and believe and thereupon allege that, at all times
4 material herein, Counterdefendant Sham VII owned and/or operated and/or managed certain
5 property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115, in Clark County, Nevada, and
6 commonly referred to as Village Square, Village Square Apartments, and Shamrock Properties.

7 34. Counterclaimants are informed and believe and thereupon allege that, at all times
8 material herein, Counterdefendant ND Manger LLC (hereinafter “NDM”) is a Delaware limited
9 liability company, with a principal place of business in Greenwich, CT, also doing business in
10 Clark County, State of Nevada. At the time of the events in question, NDM through its entity
11 membership interests was the holder of a beneficial interest in real property located in Clark
12 County, Nevada.

13 35. Counterclaimants are informed and believe and thereupon allege that, at all times
14 material herein, Counterdefendant Shamrock Property Management LLC (hereinafter “SHAM
15 PM”) is a Delaware limited liability company, with a principal place of business in Greenwich,
16 CT, also doing business in Clark County, State of Nevada.

17 36. Counterclaimants are informed and believe and thereupon allege that, at all times
18 material herein, Counterdefendant Shamrock Communities LLC (hereinafter “SHAM C”) is a
19 Delaware limited liability company, with a principal place of business in Greenwich, CT, was
20 also doing business in Clark County, State of Nevada.

21 37. Counterclaimants are informed and believe and thereupon allege that, at all times
22 material herein, Counterdefendant Shamrock Communities Management LLC (hereinafter
23 “SHAM CM”) is a Delaware limited liability company, with a principal place of business in
24 Greenwich, CT, was also doing business in Clark County, State of Nevada.

25 38. Counterclaimants are informed and believe and thereupon allege that, at all times
26 material herein, Counterdefendant MMM INVESTMENTS LLC (hereinafter “MMM INV”) is a
27 Delaware limited liability company, also doing business in Clark County, State of Nevada. At
28

1 the time of the events in question, MMM INV through its entity membership interests was the
2 holder of a beneficial interest in real property located in Clark County, Nevada.

3 39. Counterclaimants are informed and believe and thereupon allege that, at all times
4 material herein, Counterdefendant Weinstein is a resident of Utah. At all times relevant herein,
5 Weinstein conducted business in Clark County, Nevada, was the Chief Executive Officer of
6 Shamrock Communities LLC, and manager of NDM, which was in turn the managing manager
7 of SHAM VI and SHAM VII, and through which Weinstein exercised control over SHAM VI
8 and SHAM VII; individually was a member and key principal of SHAM VI and VII; and was a
9 guarantor of a real estate loan underwritten in and secured by real property located in Clark
10 County, Nevada.

11 40. Counterclaimants are informed and believe and thereupon allege that, at all times
12 material herein, Counterdefendant Davidson, currently known as Hilary Burt, is a resident of
13 New York. At all times relevant herein, Davidson conducted business in Clark County, Nevada;
14 was the Managing Director and Chief Operations Officer of Shamrock Property Management
15 LLC, which was property management company for SHAM VI and SHAM VII, including the
16 Properties which were located in Clark County, Nevada, and through which Davidson exercised
17 control over SHAM VI and SHAM VII as a key principal of SHAM VI and VII.

18 41. Counterclaimants are informed and believe and thereupon allege that, at all times
19 material herein, Counterdefendant Wilde is a resident of Indiana. At all times relevant herein,
20 Wilde conducted business in Clark County, Nevada; was the Director of Operations of Shamrock
21 Property Management LLC, which was property management company for SHAM VI and
22 SHAM VII, including the Properties which were located in Clark County, Nevada, and through
23 which Wilde exercised control over SHAM VI and SHAM VII as a key principal of SHAM VI
24 and VII.

25 42. Counterclaimants allege that the true names and capacities, whether individual,
26 corporate, associate or otherwise of Counterdefendants named herein as Doe Individuals and Roe
27 Entities 1 through 200, inclusive, are unknown to Counterclaimants, who therefore sue said
28 Counterdefendants by such fictitious names. Counterclaimants will ask leave to amend this

1 Complaint to show the true names and capacities Does Individuals and Roe Entities 1 through
2 200, inclusive, when the same have been ascertained. Counterclaimants believe and therefore
3 allege that each Counterdefendant named as a Doe Individual and Roe Entity is responsible in
4 some manner for the events herein referred to and caused damages proximately thereby to
5 Counterclaimants as alleged herein.

6 43. Counterclaimants allege Counterdefendants named herein as Doe Individuals and
7 Roe Entities 1 through 200, were legal entities/residents of Clark County, Nevada, and/or
8 authorized to do business by the State of Nevada. Furthermore, said Doe and Roe Counter-
9 defendants were employees, agents, or servants of Counterdefendants in its control and
10 functioned and assisted in the operation, control, maintenance and/or management of the
11 premises, in which Counterclaimants were injured by Counterdefendants' conduct, which caused
12 Counterclaimants' damages.

13 44. Counterclaimants allege Counterdefendants named herein as Doe Individuals and
14 Roe Entities 1 through 200, were acting on behalf of either the Sham Defendants or Grandbridge
15 according to proof.

16 45. Counterclaimants allege Counterdefendants, including those named herein as Doe
17 Individuals and Roe Entities 1 through 200, are persons, corporations, partnerships, or other
18 entities whose acts, activities, misconduct or omissions, at all time material hereto, make them
19 jointly and severally liable under the claims for relief set forth hereinafter.

20 46. Doe 1/Roe 1 is the unknown prior legal owner of the premises located at 4870
21 Nellis Oasis Lane, Las Vegas, NV 89115.

22 47. Doe 2/Roe 2 is the unknown prior legal owner of the premises located at 5025
23 Nellis Oasis Lane, Las Vegas, NV 89115.

24 48. Doe 3/Roe 3 is the unknown prior owner of the business located at 4870 Nellis
25 Oasis Lane, Las Vegas, NV 89115.

26 49. Doe 4/Roe 4 is the unknown prior owner of the business located at 5025 Nellis
27 Oasis Lane, Las Vegas, NV 89115.

1 50. Doe 5/Roe 5 is the unknown prior manager(s) and/or owner(s) and/or operator(s)
2 of the apartment complex located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

3 51. Doe 6/Roe 6 is the unknown prior manager(s) and/or owner(s) and/or operator(s)
4 of the apartment complex located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

5 52. Doe 7/Roe 7 is the prior true legal owner(s) and/or corporate owner(s) of the
6 property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

7 53. Doe 8/Roe 8 is the prior true legal owner(s) and/or corporate owner(s) of the
8 property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

9 54. Doe 9/Roe 9 is the prior true legal owner(s) and/or subsidiaries of Sham VI
10 operated the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

11 55. Doe 10/Roe 10 is the prior true legal owner(s) and/or subsidiaries of Sham VII
12 operated the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

13 56. Doe 11/Roe 11 is the prior unknown subsidiary of Sham VI that operated and/or
14 owned and/or managed the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

15 57. Doe 12/Roe 12 is the prior unknown subsidiary of Sham VII that operated and/or
16 owned and/or managed the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

17 58. Doe 13/Roe 13 is the prior unknown property management company responsible
18 for managing the property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

19 59. Doe 14/Roe 14 is the prior unknown property management company responsible
20 for managing the property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

21 60. Does 15 through 24/Roes 15 through 24 are the current or prior unknown owners,
22 members or shareholders of Counterdefendant MMM INVESTMENTS LLC, either directly or
23 indirectly through an intermediary company, corporation, firm, partnership, trust, or any other
24 form of business organization.

25 61. Does 25 through 34/Roes 25 through 34 are the current or prior unknown
26 employees, contractors, or agents of the Sham Defendants, either directly or indirectly through
27 an intermediary company, corporation, firm, partnership, trust, or any other form of business
28

1 organization, who made misstatements or participated in the creation of documents to support the
2 making of the misstatements on behalf of the Sham Defendants.

3 62. Does 35 through 44/Roes 35 through 44 are the current or prior unknown
4 employees, contractors, or agents of Grandbridge, including during the periods of time that it
5 was known or doing business as Cohen Financial, SunTrust Bank or Truist Bank, who either
6 directly or indirectly through an intermediary company, corporation, firm, partnership, trust, or
7 any other form of business organization conspired or colluded to enable the Sham Defendants to
8 improperly pass loan underwriting in 2017, to otherwise obtain a loan in 2017, or to assign those
9 loans that did not meet Fannie Mae's underwriting criteria to Counterclaimants.

10 63. Does 45 through 54/Roes 45 through 54 are the current or prior unknown
11 employees, contractors, or agents of Fannie Mae, who either directly or indirectly through an
12 intermediary company, corporation, firm, partnership, trust, or any other form of business
13 organization conspired or colluded to enable the Sham Defendants to improperly pass loan
14 underwriting in 2017, to otherwise obtain a loan in 2017, or to assign those loans that did not
15 meet Fannie Mae's underwriting criteria to Counterclaimants.

16 64. This Court has personal jurisdiction over Defendants because they are residents of
17 or have conducted business at all times relevant herein in Clark County, Nevada and their
18 obligations to Plaintiffs arise from contracts pertaining to real estate located in Clark County,
19 Nevada and/or from actions undertaken in Clark County, Nevada.

20 65. Venue is proper in this district pursuant to Nevada Revised Statutes §§ 13.010 and
21 13.040.

22 **III. FACTS COMMON TO ALL CAUSES OF ACTION RELATED TO**
23 **FANNIE MAE AND GRANDBRIDGE**

24 8-66. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
25 preceding paragraphs as if fully set forth herein.

26 **Westland's Real Estate Wherewithal**

27 9-67. By way of background, Amusement ~~Industry, Inc., a California entity,~~ and Las
28 Vegas Residential Properties, LLC, a Nevada limited liability company, are entities doing

1 business as Westland Real Estate Group, which was founded by an individual who has over 50
2 years of experience in the Southern California and Las Vegas real estate markets.

3 ~~10.68.~~ During the 50 years Westland Real Estate Group has been in business, consistent
4 with lender required practices for risk allocation in the real estate industry, Westland has formed
5 numerous special purpose entities to own each separate large multifamily real property.

6 ~~11.69.~~ Cumulatively, the ownership of and entities associated with Westland Real Estate
7 Group, are characterized by the following traits:

- 8 a. Westland Real Estate Group associated entities focus on ownership of
9 properties in the Las Vegas and Southern California multifamily housing
10 markets.
- 11 b. Westland Real Estate Group associated entities own and manage
12 approximately 100 multifamily residential properties and a limited number of
13 manufactured home sites, for a combined 13,000 residential units, *over 10,000*
14 *of which are located at 38 different multifamily housing communities in all*
15 *sections of the Las Vegas metropolitan area.*
- 16 c. Westland Real Estate Group associated entities have approximately \$300
17 million of loans outstanding with Fannie Mae, and approximately \$800
18 million of loans with all lenders.
- 19 d. *Prior to the present matter*, over the course of the 50 years that Westland Real
20 Estate Group has been in operation, its associated entities have had an
21 unblemished lending reputation, in that no entity associated with Westland
22 Real Estate Group has ever had a notice of default issued on even a single
23 mortgage loan with any lender.
- 24 e. The primary tenant base associated with Westland Real Estate Group are
25 working class families of modest means. With its major investments in these
26 communities, Westland is able to provide housing to tenants of all protected
27 classes and socio-economic groups, and build local communities.

- 1 f. The mission of Westland Real Estate Group entities is to provide those
2 working class families a safe, stable and pleasant living environment within its
3 communities. Unlike most real estate investors, Westland invests the time and
4 financial resources to do so.
- 5 g. In order to provide those safe and stable communities, Westland Real Estate
6 Group entities employ approximately 500 employees, such as onsite
7 managers, maintenance personnel, a dedicated “turn” team that rehabilitates
8 vacant units, accounting staff, marketing staff, leasing representatives, and
9 call center personnel, who have attained substantial experience in addressing
10 the needs of its tenant base. The majority of that staff is located in Las Vegas.
- 11 h. Westland Real Estate Group employees give the group a competitive
12 advantage by allowing the combined entities to function in a cost-effective
13 manner, which efficiencies cannot be replicated by other property
14 management entities that operate primarily by employing outside contractors.
- 15 i. Westland Real Estate Group’s associated entities and employees are able to
16 create safe and stable communities by their established productive
17 relationships with law enforcement officers and providers of specialized
18 services.

19 70. In 2018, Liberty, LLC and Village, LLC were the two entities formed by the
20 principals of Westland Real Estate Group to hold the properties located at 4870 Nellis Oasis
21 Lane, Las Vegas, NV 89115, and 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

22 //

23 //

24
25 #

26 **The Westland Liberty Property & Square Property Ownership**

27 ~~42.71.~~ On or about August 29, 2018, Liberty LLC purchased the property commonly
28 known as 4870 Nellis Oasis Lane, Las Vegas, NV 89115 (the “Liberty Property”).

1 ~~13.72.~~ Liberty LLC recorded its deed with the Clark County Recorder's Office as
2 Instrument No. 20180830-0002684 (the "Liberty Deed") on or about August 30, 2018, thus
3 Liberty LLC is the legal title holder of the Liberty Property. (Exhibit B, Liberty Property Grant,
4 Bargain and Sale Deed, filed August 30, 2018.)

5 ~~14.73.~~ On or about August 29, 2018, Square LLC purchased the property commonly
6 known as 5025 Nellis Oasis Lane, Las Vegas, NV 89115 (the "Square Property" and together
7 with the Liberty Property, the "Properties").

8 ~~15.74.~~ Square, LLC recorded its deed with the Clark County Recorder's Office as
9 Instrument No. 20180830-0002651 (the "Square Deed") on or about August 30, 2018, thus
10 Square, LLC is the legal title holder of the Square Property. (Exhibit C, Square Property Grant,
11 Bargain and Sale Deed, filed August 30, 2018.)

12 **The Shamrock Purchase**

13 ~~16.75.~~ Prior to Liberty LLC's and Square LLC's purchase of the Liberty Property and
14 the Square Property, the Properties were owned by Shamrock Properties VI LLC and Shamrock
15 Properties VII LLC (in combination the "Shamrock Entities").

16 ~~17.76.~~ Upon information and belief, the Shamrock Entities acquired the properties in a
17 distressed condition from a lender Real Estate Owned ("REO") sale held for the benefit of
18 Fannie Mae in 2014.

19 ~~18.77.~~ An REO is a lender owned property that the lender was unable to sell at a
20 foreclosure auction, which requires that lending bank or quasi-governmental entity (namely
21 Fannie Mae or Freddie Mac) to take ownership of the foreclosed property after it was unable to
22 be sold for an amount sufficient to cover the existing loan at a foreclosure sale.

23 ~~19.78.~~ It is commonly known in the real estate industry that lenders sell REO properties
24 "as is" and do not make repairs to the properties before the properties are sold, and on that basis
25 such properties are typically in disrepair.

26 ~~20.79.~~ Upon information and belief, typically when Fannie Mae conducts a REO sale,
27 Fannie Mae will not agree to finance that property again.

28

1 ~~21.80.~~ At the time of initial purchase at the REO sale, the Liberty Property and the
2 Square Property were not financed by the Shamrock Entities through Fannie Mae or Freddie
3 Mac.

4 **The Properties' Condition During the Shamrock Years**

5 ~~22.81.~~ In 2017, the Liberty Property and the Square Property remained in a perilous
6 position.

7 ~~23.82.~~ Upon information and belief, at the time of the initial purchase of the two
8 properties, the owners of the Shamrock Entities had hoped to be able to capitalize on the close
9 proximity of the properties to Nellis Air Force Base by becoming approved as a provider of off-
10 base housing for military personnel.

11 ~~24.83.~~ However, the ownership group associated with the Shamrock Entities operated
12 out of Indiana and Connecticut, ~~that ownership group~~ attempted to oversee the properties from
13 those remote locations, and ~~they~~ were not invested in the Las Vegas community.

14 ~~25.~~ Further, the ownership and onsite staff employed by the Shamrock Entities
15 utilized questionable business practices, including in the area of financial accounting.

16 ~~26.84.~~ By way of example, after Westland took over the two properties, it discovered
17 that the financial information it received from the Shamrock Entities had improperly accounted
18 for the occupancy rate at the properties. While at the time of purchase in August 2018, the
19 Shamrock Entities touted the occupancy rate as 85%, the Shamrock Entities' financials failed to
20 show the true occupancy rate by failing to report that a substantial portion of its "tenant" base
21 was delinquent, failing to disclose that those tenants had not paid rent for several months,
22 continuing to show those units as generating rental income that had not been paid, and by not
23 taking any action to evict those "tenants."

24 ~~85.~~ Upon information and belief, the Shamrock Entities provided the same financial
25 misinformation regarding occupancy rates to Fannie Mae and Grandbridge, the its loan servicer.

26
27 ~~27.86.~~ Upon information and belief, the high levels of delinquencies at the properties
28 were related to the utilization of questionable leasing practices, including a lax background check

1 process that resulted in the Shamrock Entities accepting tenants with unacceptably high levels of
2 credit risk and/or ~~those with~~ unacceptable criminal records. Those practices were implemented
3 to further inflate occupancy rates but were counterproductive in that the Shamrock Entities' acts
4 and omission~~the processes~~ resulted in the lack of a safe, viable community for the qualified
5 residents of the properties, which in turn resulted in high turnover rates among qualified
6 residents ~~of the properties~~.

7 28.87. The Shamrock Entities were never able to operate the Properties as effective
8 communities, were never able to fully physically rehabilitate the properties, and were not able to
9 become an approved off-base housing provider for Nellis Air Force Base consistent with their
10 original plan.

11 29.88. Instead, during the Shamrock Entities ownership, the condition of the Properties
12 continued to deteriorate and the rate of crime at the Properties increased to precarious levels.

13 30.89. Upon information and belief, prior to Fannie Mae's ownership of the Properties in
14 2014, ~~it was~~they were crime ridden and gang infested.

15 31.90. Upon information and belief, when Fannie Mae installed a receiver in 2014, the
16 receiver was unable to get rid of the criminal element at the Properties, and that criminal element
17 continued to plague the Properties until Westland purchased them.

18 32.91. In fact, by letter dated April 4, 2018, the Las Vegas Metropolitan Police
19 Department, sent the Shamrock Entities a Notice and Declaration of Chronic Nuisance (the
20 "Nuisance Notice"), based on the high rate of crime at the ~~two-p~~Properties, which included a
21 high rate of violent and serious criminal conduct. (Attached as Exhibit A, is the Letter of
22 Matthew J. Christian on behalf of Sherriff Joseph Lombardo, dated April 4, 2018.)

23 92. The Nuisance Notice states that it was sent because the ~~two-P~~Properties had
24 generated over 1000 calls for service to the police department in the six-month period between
25 September 28, 2017, and April 4, 2018. (Exhibit A at 2.)

26
27 33.93. Further, the Nuisance Notice noted that the calls generated at the ~~two-p~~Properties
28 included an alarming number of violent and serious offenses, such as "fights, assaults, batteries,

1 and illegal shootings” and stated that “[d]rugs, gangs, and sexual predators are also prevalent at
2 the Property.” (Exhibit A at 2.)

3 ~~34.94.~~ The Nuisance Notice provided a “sample of recent events,” which recounted
4 conduct that frequently involved the use of firearms and dangerous weapons, and the letter noted
5 that “violent crime has been a continual problem at the Property. The lack of cooperation from
6 management and security is also a continual problem.” (Exhibit A at 3-6.)

7 ~~35.95.~~ Simply stated, the Shamrock Entities were never able to rehabilitate the Properties
8 ~~as they had planned.~~

9 **Shamrock’s Exit Strategy & The Loan Agreements**

10 ~~36.96.~~ During early to mid-2017, recognizing their ~~ongoing failure~~inability to
11 rehabilitate the Properties, the Shamrock Entities marketed the Liberty Property and the Square
12 Property for sale.

13 ~~37.97.~~ However, the Shamrock Entities were unable to sell the two Properties.

14 ~~38.98.~~ As such, upon information and belief, the owners of the Shamrock Entities did the
15 next best thing; they shifted their focus to obtaining financing in an effort to remove their capital
16 investment in the Properties; until the Properties could be sold.

17 ~~39.99.~~ Upon information and belief, one of the owners of the Shamrock Entities had a
18 prior relationship with a division of SunTrust Bank known as Cohen Financial, which after
19 several name changes was later renamed Grandbridge Real Estate Capital, LLC.

20 ~~40.100.~~ Upon information and belief, based on that pre-existing relationship,
21 during November 2017, the Shamrock Entities were able to secure financing for seven years on a
22 \$29,000,000 loan on the Liberty Property (the “Liberty Loan”) and a \$9,366,000 loan on the
23 Square Property (the “Square Loan,” and in combination with the Liberty Loan, the “Loans”),
24 allowing the owners of the Shamrock Entities to cash out roughly \$38,000,000.

25 ~~41.101.~~ As the entity underwriting and servicing the Loans, Grandbridge has, at all
26 times mentioned herein, done business in the State of Nevada as a DUS lender and loan servicer
27 for Fannie Mae.

28

1 42.102. In relation to the “DUS Servicing and Underwriting platform,” Fannie
2 Mae’s own website states that “**25 DUS** lender partners are authorized to **underwrite, close,**
3 **and deliver loans** on our behalf. In exchange, Lenders and Fannie Mae **share the risk** on those
4 loans” by covering 1/3 of the credit risk.
5 <https://www.fanniemae.com/powerofpartnershiparbor/index.html>.

6 43.103. Further, information published by Fannie Mae states that “the DUS
7 program grants approved lenders the ability to underwrite, close, and sell loans on multifamily
8 properties to Fannie Mae without prior Fannie Mae review.”

9 44.104. Stated differently, Grandbridge, was able to make the Liberty Loan and
10 the Square Loan without Fannie Mae’s prior approval.

11 45.105. Upon information and belief, when making loans, DUS lenders are
12 required to follow Fannie Mae’s credit and underwriting criteria for loans, and the DUS lender is
13 subject to ongoing credit review and monitoring.

14 46.106. Upon information and belief, at the time that the loans were underwritten
15 by Grandbridge for the Shamrock Entities, the Liberty Property and Square Property did not
16 meet Fannie Mae’s credit and underwriting criteria, because, *inter alia*, the two properties had
17 excessively high crime rates,¹⁰ the Properties were subject to a prior Fannie Mae REO sale, the
18 income for the Properties was overstated.

19 **Grandbridge’s & Fannie Mae’s Reserve Requirements for the Shamrock Entities**

20 47.107. Additionally, to the extent that Fannie Mae and Grandbridge claim that the
21 present physical condition of the Properties requires a larger repair and/or replacement reserve
22 deposit based on Fannie Mae’s underwriting criteria, then the physical condition of the
23 Properties in November 2017 would also have violated Fannie Mae’s credit and underwriting
24 criteria, and since the condition of the Properties has improved, the initial funding of the loan to
25 Grandbridge should have required an even larger repair and/or replacement reserve deposit.

26
27 ¹⁰ To be clear, as stated in Paragraphs 49-5236-39, the LVMPD’s letter was sent in response to conduct taking place
28 between-from September 28, 2017 through April 4, 2018, which means that the loans were underwritten while the
high levels of crime related to the Nuisance Notice were in process.

1 ~~48.108.~~ Upon information and belief, at the time of the November 2017 loan,
2 Grandbridge contracted to have a property condition assessment report prepared by CBRE for
3 both properties.

4 ~~49.109.~~ At the Liberty Property, CBRE did not inspect every unit, but rather only
5 made “[r]epresentative observations” from 71 units at the 720 unit, 90 building property, and
6 while several units were found to be in poor condition, the comment to that section of the report
7 was only “[n]o further action required.” (Exhibit D, CBRE Property Condition Assessment
8 Report for Liberty Village, dated August 8, 2017, at 5, 29-32.) Similarly, at the Square Property,
9 CBRE’s “[r]epresentative observations” were made from 41 units at the 409 unit, 7 building
10 property, and although several units were found to be in poor condition the report concluded
11 there was “[n]o further action required.” (Exhibit E, CBRE Property Condition Assessment
12 Report for Village Square, dated August 8, 2017, at 5, 29-30.)

13 ~~50.110.~~ Further, while the August 2017 Liberty report noted that “[t]he unit
14 finishes appeared in generally good to poor condition,” the report opined that maintenance could
15 be “addressed as part of unit turns, tenant request, or periodic inspections.” (Exhibit D, at 32.)
16 This was echoed by the August 2017 Square report that noted 13 of the 41 units inspected were
17 “undergoing renovation,” and that another 4 units were only in “fair condition,” but still the
18 report concluded that maintenance could be “addressed as part of unit turns, tenant request, or
19 periodic inspections.” (Exhibit E, at 29-31.)

20 ~~51.111.~~ As such, despite discrepancies being noted within the inspected units at
21 the Properties in the August 2017 reports, Grandbridge and Fannie Mae did not require any funds
22 to be immediately deposited into a reserve account for unit repairs. (Exhibit D, at 8-10; Exhibit
23 E, at 8-10.)

24 ~~52.112.~~ Instead, aside from units that were considered “down units” related to an
25 insurable event, the Shamrock Entities were only required to supply a monthly deferred
26 maintenance payment for each unit, rather than an immediate reserve deposit. (Exhibit D, at 6,
27 8-10, 32; Exhibit E, at 6, 8-10, 32.)
28

1 ~~53.113.~~ The amount of that monthly reserve deposit was based on a formulaic
2 calculation related to the depreciable life of various features of the multiple bedroom layouts at
3 the Liberty Property, such as appliances, paving, HVAC systems, and flooring, which resulted in
4 a cost of \$300 per unit/per annum, which was increased to \$354 per unit per annum when
5 accounting for inflation. (Exhibit D, at 6, 10.) The same formulaic calculation was conducted for
6 the Square Properties' studio units, and resulted in a cost of \$210 per unit/per annum, which was
7 increased to \$248 per unit/per annum when accounting for inflation. (Exhibit E, at 6, 10.)

8 ~~54.114.~~ Based on the standard used during those inspections, it is clear that the
9 PCA report from Grandbridge's inspector, recommended that no reserve deposit amounts were
10 required for vacant units that needed to be "turned" for re-rental, including those that were in
11 need of repair or "undergoing renovations." Thus, Fannie Mae and Grandbridge did not increase
12 required repair reserves for the Shamrock Entities to account for "turning" rental units, nor did it
13 require the same large capital infusion for maintenance, repairs or replacements.

14 ~~55.115.~~ Instead, the only reserve and repair escrow items that were required to be
15 deposited were items related to immediate substantial extra-ordinary property improvements,
16 such as asphalt repairs, façade repairs, balcony repairs, fire damage repairs, laundry room
17 renovations, sport court renovations, and pool equipment replacement. (Plaintiff's Complaint,
18 Ex. 1, page 117, 131, 133; Plaintiff's Complaint, Ex. 6, pages 117, 131 133, 149.)

19 ~~56.116.~~ Based on the use of that standard, for the Liberty Property, the Shamrock
20 Entities were only required to deposit a total of \$315,000 for the initial replacement reserve and
21 \$165,635 for the initial repair reserve, and for the Square Property, the Shamrock Entities only
22 deposited \$85,091 for the repair reserve with no replacement reserve. (Plaintiff's Complaint, Ex.
23 1, page 117, 131, 133; Plaintiff's Complaint, Ex. 6, pages 117, 131 133, 149.) Stated differently,
24 in order to meet all of the repair and replacement reserve requirements at the time of the initial
25 loan closing, the Shamrock Entities were only required to place \$560,187.00 into the reserve
26 accounts, combined, for both Properties.

27 ~~57.117.~~ At the time of the initial loan closing, Grandbridge had an incentive to
28 obtain the smallest repair and replacement reserve requirements possible in order to increase its

1 chance of closing the loan with the Shamrock Entities, which would, in turn, reduce its own loan
2 portfolio risk, generate ~~initial~~ underwriting fees, and require continuing Servicer fees for itself, as
3 well as business for Fannie Mae.

4 58.118. As such, Grandbridge, with the knowledge and consent of Fannie Mae,
5 utilized CBRE to perform the August 2017 PCA, despite that Grandbridge and Fannie Mae knew
6 doing so would result in minimal repair and replacement reserve requirements that were
7 inadequate.

8 **Westland's Purchase of the Properties & Loan Assumption**

9 59.119. Approximately one year after the CBRE inspections, and only nine
10 months after the initial loan closing, Westland completed its purchase of the Liberty Property
11 and Square Property on August 29, 2018.

12 60.120. Westland acquired the Liberty Property through Liberty LLC for
13 \$44,300,000, *including a \$15,300,000.00 cash deposit* from Westland's own funds and by
14 assuming the \$29,000,000 loan made by Grandbridge and Fannie Mae to the Shamrock Entities.
15 (Exhibit F, Purchase and Sale Agreement for Liberty Village, dated June 22, 2018, at Pages 4,
16 Section 1.18 & Page 5, Section 1.33.)

17 61.121. Westland acquired the Square Property through Square LLC for
18 \$16,000,000.00, *including a \$6,634,000.00 cash deposit* from Westland's own funds and by
19 assuming the \$9,366,000 loan made by Grandbridge and Fannie Mae to the Shamrock Entities.
20 (Exhibit G, Purchase and Sale Agreement for Village Square, dated June 22, 2018, at Page 4,
21 Section 1.12 & Page 5, Section 1.25.)

22 62.122. Prior to permitting Counterclaimants to assume the two loan agreements,
23 Grandbridge required the payment of a 1% loan assumption fee, amounting to \$290,000 and
24 \$93,660 respectively for the two Properties, as well as payment of all costs and expenses
25 associated with approving the assumption agreement. (Exhibit H, Assumption Closing Statement
26 for Liberty Village, dated August 29, 2018; Exhibit I, Assumption Closing Statement for Village
27 Square, dated August 29, 2018.)
28

1 63-123. One of the costs included on each closing statement was a \$435.00 charge
2 for a “property inspection invoice,” which was far short of the fee that would normally be
3 charged for a full and accurate property condition assessment report, and far short of the
4 approximately \$30,000 fee for f3, Inc.’s PCA ~~that~~ for which Fannie Mae is now seeking
5 reimbursement. (Exhibits H & I.)

6 64. While no legitimate property condition assessment report appears to have been
7 performed at the time of the assumption, based on Article 13.02(a)(3)(B) of the loan agreement,
8 Fannie Mae and Grandbridge had the ability to require such another inspection to be
9 performed at that time, and to require that any transfer be conditioned on an additional transfer
10 into the repair or replacement reserves. (Plaintiff’s Complaint, Ex. 1, pages 69-70, Section
11 13.02(a)(3)(B); Plaintiff’s Complaint, Ex. 6, pages 69-70, Section 13.02(a)(3)(B).)

12 65-124. Grandbridge and Fannie Mae simply failed to do so.

13 125. Instead, at the time the loans were assumed, Grandbridge and Fannie Mae did not
14 require any change ~~was made~~ to the Replacement Reserve monthly payment and they did not
15 require any additional Repair Reserve deposit ~~was required~~. As such, at that time, the total
16 reserves for both Properties was \$143,319.30. (Exhibit J, Assumption Approval Letter for
17 Liberty Village, dated August 22, 2018, at 2, 5-7; Exhibit K, Assumption Approval Letter for
18 Village Square, dated August 22, 2018, at 2, 5-7.)

19 126. At a minimum, if they had any concern with the condition of the Properties,
20 Grandbridge and Fannie Mae should have made changes to the contracts’ reserve and
21 replacement amounts by amending the Required Repair Schedules to adjust for any deterioration
22 that existed at the time of the loan assumption.

23 127. The Lenders’ failure to specify such deterioration as Additional Required Repairs
24 at that time, while simultaneously agreeing to new Required Repair schedules either meant that
25 Lenders specifically agreed not to require a reserve for such conditions, and if such deterioration
26 existed at the time of loan assumption it was inconsistent with Fannie Mae’s own loan
27 underwriting criteria to permit the assumption without requiring an additional reserve deposit.~~or~~
28 that Grandbridge performed incompetent underwriting.

1 ~~66-128.~~ Further, Grandbridge recognized the repairs that had already been
2 performed in the nine months since the initial PCA, which resulted in the funds for the repair
3 reserve account being *reduced* to a de minim~~us~~ amount of \$39,375 for both Properties, and
4 Grandbridge maintained the same monthly debt service payments to account for the depreciable
5 items related to the replacement reserves. (*Id.*)

6 ~~67-129.~~ At the time the loans were assumed, Grandbridge had access to both the
7 Shamrock Entities' and Westland's financial information, and based on that information,
8 Grandbridge realized that Westland possessed greater financial wherewithal and property
9 management experience.

10 ~~68-130.~~ Stated differently, based on disclosures regarding the financial securities
11 held by the Westland Securities Entities, such as the July 25 and July 28, 2018 email disclosures
12 detailing the Westland Securities Entities' role as guarantors and as the source of funds,
13 Grandbridge knew Westland was a much more financially secure~~better~~ borrower, ~~and more~~
14 experienced owners than the Shamrock Entities, and that substituting a better borrower for the
15 Shamrock Entities would decrease the risk associated with the loan to the benefit of both itself
16 and Fannie Mae.

17 ~~69-131.~~ As such, Grandbridge had an incentive to utilize the smallest repair and
18 replacement reserve requirements possible in order to increase its chance of completing the loan
19 assumption with Westland.

20 ~~70-132.~~ Completing the loan assumption from the Shamrock Entities to Westland
21 resulted in Grandbridge's generation of a 1% loan assumption fee of \$383,660 with nearly no
22 effort from Grandbridge.

23 ~~71-133.~~ In completing the loan assumption, Grandbridge was acting as an agent for
24 the benefit of Fannie Mae, by substituting a borrower on the loan, which stated in the simplest
25 terms, had a superior~~increased~~ credit rating and financial wherewithal.

26 ~~72-134.~~ As such, before closing the assumption transaction between Westland and
27 the Shamrock Entities, Grandbridge, with the knowledge and consent of Fannie Mae, continued
28 to rely solely upon CBRE's August 2017 PCA, despite that Grandbridge and Fannie Mae knew

1 doing so would result in minimal repair and replacement reserve requirements in the Loan
2 Documents.

3 73.135. Westland relied on Grandbridge's and Fannie Mae's actions. For example,
4 Westland did not require the Shamrock Entities to-in-refraining-from increasesing these reserves
5 at the time of the loan assumption, because~~which lead~~ Westland ~~to~~-believed, based on the
6 express terms of the Loan Agreements' limited terms for adjustments to the reserves (i.e. to
7 expenses of the same type that had been charged in the original loan document), that the same
8 levels of reserve funding that had been required to that point would continue to be used in the
9 future, ~~especially since the Loan Agreements' limited adjustments to the reserves to expenses of~~
10 ~~the same type that had been charged in the original loan documents.~~

11 74.136. Based on Westland's increased capital expenditure spending, no
12 deterioration in the condition of the Properties, other than ordinary wear and tear, has occurred
13 since Westland's assumption of the Loan Agreements.

14 **Westland's Rehabilitation of the Properties and Community Building**

15 75.137. Nearly immediately after it began managing the Properties, Westland
16 realized that the Properties were not in the condition that had been represented by the Shamrock
17 Entities, because the onsite tenants made unusual statements regarding the Shamrock Entities'
18 practices at the Properties.

19 76.138. Further, the day before closing, the Shamrock Entities were required to
20 supply complete electronic financial information for the Properties, but did not do so, and instead
21 shortly after~~nearly contemporaneously with~~ the closing, Westland was required to have a
22 software vendor access the Shamrock Entities records to obtain ~~had produced~~ a full copy of the
23 Shamrock Entities complete electronic records ~~that, and~~ once uploaded, it was discovered the
24 complete records contained additional embedded financial information related to historical data
25 that show~~proving that~~ the Shamrock Entities had overstated occupancy numbers and presented
26 misleading information on its delinquency balances.

27 77.139. Even after obtaining the additional post-closing data, Based on the
28 voluminous amount of financial information that had to be unraveled, and compared to the

1 ~~method that such~~the information ~~is typically~~ disclosed during due diligence unrelated to athe
2 property sale, Westland did not immediately unravel the Shamrock Entities improper accounting
3 practices.

4 78.140. However, based on the method that financial delinquencies and
5 occupancies are reported to lenders, which upon information and belief included additional
6 reports that were not available to Westland in due diligence, the Shamrock Entities misstated
7 financials should have been detected by Grandbridge and Fannie Mae, and it was only through
8 the Lender's lack of proper oversight and investigation that the Lender's failed to detect the
9 occupancy irregularities, which would have been detected if they had used proper loan servicing
10 and oversight protocols for these properties and the Shamrock Entities' loans.

11 79.141. Consequently, the Shamrock Entities' ~~At the time of due diligence or a~~
12 ~~real estate closing in Nevada, the industry practice is that only limited financial statements,~~
13 ~~including a rent roll, will be provided to a purchaser, but here the~~ rent roll failed to show accurate
14 levels of delinquencies by listing delinquent units as income producing. H; however, based on
15 their loan agreements, Fannie Mae and Servicer were entitled to more detailed financial
16 information that would account for those delinquencies ~~unless they were provided false~~
17 ~~information.~~ The Lender's lack of oversight and failure to enforce the Shamrock Entities' loan
18 agreements permitted the Shamrock Entities' false reporting, which in turn Westland relied upon
19 in assuming those loans, believing that the Lenders had been following and enforcing the much
20 more thorough reporting requirements from their borrower that the contracts required.

21 80.142. Upon ~~discovering~~termining the Shamrock Entities' improper accounting
22 practices and misrepresentations, Westland, at the time it made its first quarterly financial report,
23 informed Fannie Mae, through Grandbridge, that the Shamrock Entities' financials appeared
24 inaccurate ~~at the time it made its first quarterly financial report.~~

25 81.143. Westland made those disclosures knowing that it was required to
26 incorporate a portion of the Shamrock Entities' financial information in order to produce the first
27 quarterly financial report, and on that basis, it wanted Grandbridge and Fannie Mae to know that
28 it could not ensure the complete reliability of that financial information.

1 82.144. Specifically, Westland advised Grandbridge and Fannie Mae that the
2 Shamrock Entities' financials overstated occupancy rates at the Properties by approximately 10%
3 from the 86% that had been reported and that the overstated occupancy rates resulted from the
4 Shamrock Entities' failure to evict tenants that had not paid rent for several months and their
5 failure to show tenants that had not paid rent as delinquent.

6 83.145. Upon information and belief, the Shamrock Entities had an incentive to
7 misrepresent the true occupancy rates at the Properties for several reasons, including that:

- 8 a) a standard term in purchase and sale agreements, including the purchase and
9 sale agreement applicable to the sale of the Properties, requires a property
10 seller to restore all vacant units to rent ready condition and disclosing the true
11 occupancy rate would disclose that additional units were vacant,
- 12 b) processing evictions is costly in terms of time and money, ~~and~~
- 13 c) the Shamrock Entities had misrepresented the true vacancy rate to Fannie Mae
14 and Grandbridge at the time the loan was initiated several months early in
15 November 2017, and continued to misrepresent that rate for the remainder of
16 the time that they owned the Properties, and
17 d) a higher occupancy rate would induce Westland to pay a higher purchase price.

18
19 84.146. Tellingly, when Westland purchased the Properties from the Shamrock
20 Entities, Shamrock provided that Westland could retain any of its local staff, but due to
21 widespread issues of incompetence and ethically questionable behavior, Westland was only able
22 to retain 2 of Shamrock's 20 employees that worked at the Properties. ~~Further, based on~~
23 ~~Westland's experience, a staff of 32 employees is required to handle the onsite operations at the~~
24 ~~Properties.~~

25 85.147. ~~After closing~~ additionally, in order to clean up the crime problems at the
26 Properties, Westland enforced a "no tolerance" crime policy, including by evicting tenants who
27 were engaging in criminal acts, offensive misconduct, or who received "red cards" from the Las
28 Vegas Metropolitan Police Department. The immediate fallout from evicting tenants causing

1 these problems was that the occupancy rate at the Properties fell further, at least temporarily,
2 until more stable and law-abiding tenants could be found and moved into the Properties.

3 86.148. The eviction of the individuals who failed to pay rent and who engaged in
4 criminal offenses was necessary to create a safe, stable community at the Properties for
5 Westland's responsible tenants.

6 87.149. Westland also utilized an elevated security guard presence at the
7 Properties to decrease the "fights, assaults, batteries, and illegal shootings, [d]rugs, gangs, and
8 sexual predators" that were "so prevalent at the Property" prior to Westland's ownership.

9 88.150. Specifically, to create a safer environment for the Properties' tenants,
10 during the slightly less than two years from the date of purchase through ~~the present~~ August 31,
11 2020 (the time of the initial Counterclaim), Westland ~~has~~ paid approximately ~~total of~~ \$1,573,600
12 to security guard providers that have, depending on the relevant time period, continuously
13 provided either three or four guards on a twenty-four hour basis consistent with the needs of the
14 Properties.

15 89.151. Westland implemented heightened background and credit check standards
16 to increase the likelihood that it was filling vacant units at the Properties with a quality tenant
17 base.

18 90.152. Westland's efforts to create safe, viable communities for its working class
19 family residents were successful, because Westland was able to dramatically decrease the
20 incidents of crime at the Properties, decrease the number of violent and firearm related crimes at
21 the Properties, decrease the delinquency rates at the Properties, and improve the condition of the
22 Properties for the remaining tenants.

23 91.153. By way of example, shortly prior to Westland's purchase, the Nuisance
24 Notice recognized that over 1,000 calls were made to the Las Vegas Metropolitan Police
25 Department over a six month period of time, whereas by mid-2019, prior to the property
26 condition assessment being performed only 69 calls were received by the police department for
27 the prior six months, and there ~~was~~ ~~has been~~ a corresponding decrease in the number of violent
28 and firearm related offenses.

1 ~~92.154.~~ By July 2019, less than a year after the loan ~~was~~ were assigned, Westland
2 had caused dramatic enhancements at the Properties, including replacing the criminal element
3 with viable tenants, hiring competent management, and investing \$1.8 million in capital
4 improvements.

5 ~~93.155.~~ In fact, Westland's dramatic turnaround of the Properties has been
6 recognized by the Executive Director of the Nevada State Apartment Association and the County
7 Commissioner for the Properties. (Exhibit L, Letter of Nevada State Apartment Association
8 Executive Director, dated November 22, 2019; Exhibit M, Letter of County Commissioner, dated
9 August 20, 2020.)

10 ~~94.~~ However, those long-term improvements came with a short-term cost related to
11 the financial profitability of the Properties resulting from a ~~_dramatic_~~ decrease in the occupancy
12 rate during the first few months that Westland operated the Properties.

13 ~~95.156.~~ Specifically, occupancy rates at the Properties bottomed out at 44% during
14 July 2019.

15 ~~96.157.~~ Based on those decreased occupancy rates at the Properties, from the time
16 of Westland's acquisition through early 2020, the Properties were not even generating sufficient
17 income to pay the Properties' monthly debt service obligations.

18 ~~97.158.~~ When the Properties were not generating sufficient income between
19 September 2018 through early 2020, Westland ~~was required to~~ invested several million dollars of
20 its own funds for the Properties to be able to meet their monthly debt service and other
21 obligations ~~and other obligations~~.

22 ~~98.159.~~ However, by early 2020 Westland's efforts had begun to pay off
23 ~~financially as well~~, because not only had the occupancy rate at the Properties risen to 61% in
24 February 2020, but Westland was able to obtain an increased rental rate for each renovated
25 residential unit that Westland had "turned" and made rent ready – or stated differently, *by*
26 *January 2020 the Properties were stabilized with a positive NOI, and by April 2020 they were*
27 *meeting their monthly debt service payments* *without the need for funding from*
28 *Counterclaimants*.

1 ~~99.160.~~ Under Westland's management, the occupancy rates have continued to
2 increase by ~~approximately~~the 3% per month – ~~the same percentage that~~figure Westland projected
3 within its November 2019 ~~S~~strategic ~~P~~plan, ~~and the Properties currently have had over an 80%~~
4 ~~occupancy rate as of August 2020.~~ (Exhibit N, Westland Strategic Improvement Plan for Liberty
5 Village and Village Square, dated November 27, 2019.)

6 ~~100.161.~~ Coincidentally, the Properties' ~~current~~over 80% occupancy rate in August
7 2020 (at the time of Fannie Mae's Complaint) ~~was~~ nearly identical to, but slightly higher than,
8 the 77.7% *real* occupancy rate that existed at the Properties at the time they were operated by the
9 Shamrock Entities.

10 ~~101.162.~~ ~~T~~Even though the occupancy rates are nearly the same, the Properties are
11 currently ~~far~~ more profitable than under the Shamrock Entities ownership or the ownership of
12 any entity associated with Fannie Mae, because based on the higher quality renovations that
13 Westland performs when "turning" units, as well as Westland's superior screening of tenants,
14 Westland has been able to implement significantly higher unit rents.

15 ~~102.163.~~ By August 2020, ~~T~~the Properties ~~are~~were ~~now~~not only covering debt
16 service but are now also generating income in excess of operating expenses and improvement
17 costs.

18 164. In fact, the Properties' occupancy rates continued to improve, and as of August 1,
19 2021, the occupancy rate for each of the Properties was over 93%, which upon information and
20 belief is much higher than at any point during the Shamrock Entities ownership and much higher
21 than at any point when Fannie Mae operated the Properties, directly or indirectly, as an REO –
22 stated differently occupancy rates are now approximately 10% higher than they had been during
23 the 10 years prior to Westland's ownership.

24 ~~103.165.~~ As such, Westland's management has been able to restore the Properties,
25 and is now operating them at a high level of efficiency, despite the fallout from the Pandemic
26 and more than almost 18 months of eviction moratoria.

1 ~~104.166.~~ The efficient management that Westland has put in place at the Properties
2 is unlikely to be able to be replicated by an outside property management vendor, as Westland's
3 ~~32~~ onsite employees have developed an in-depth knowledge of the Properties.

4 ~~105.167.~~ Further, not only has Westland invested in the Properties themselves, but
5 Westland has also ~~_begun to~~ strategically invested in the local community, in order to develop
6 community-based resources in the local area that will make the Properties attractive to hard-
7 working families.

8 ~~106.168.~~ Specifically, shortly after Westland's purchase of the Properties, its onsite
9 management reported that a liquor store and bar located on a parcel adjacent to the Square
10 Property, at 3435 North Nellis Boulevard, Las Vegas (the "Parcel"), were attracting a criminal
11 element to the neighborhood. (Exhibit O, Property Site Map [showing the location of the Parcel
12 in relation to Properties].)

13 ~~107.169.~~ Upon contacting the Parcel's owners, Westland learned that the bar and
14 liquor store were then being under-managed, because the original owner had passed away and
15 the Parcel was under the supervision an out-of-state executor for an estate.

16 ~~108.170.~~ The bar and liquor store only occupied a small portion space on the Parcel.

17 ~~109.171.~~ Ultimately, when Westland's efforts to have the administrator take a more
18 active role with the Parcel ~~were~~ ineffective, in January 2019, Westland offered to buy the
19 Parcel, so that it could oversee the businesses that would operate ~~there, and there and~~ could
20 redevelop the site to improve the community-based resources available to the Properties'
21 residents.

22 ~~110.172.~~ Westland signed a purchase and sale agreement for the Parcel on July 8,
23 2019, and completed its purchase of the property in February 2020. (Exhibit P, Purchase and
24 Sale Agreement for 3435 N. Nellis Blvd., Las Vegas, dated July 8, 2019.)

25 ~~111.~~ Since completing the purchase in February 2020, Westland has been working with
26 the Office of the County Commissioner to develop community-based services at the Parcel.

27 ~~112.~~ Proposals for such services include a police substation and/or community day-care
28 center.

1 ~~113.173.~~ Based on interactions with its tenants, Westland's management staff has
2 determined that increasing such community-based services in the immediate vicinity of the
3 Properties would be attractive to the working class families that Westland serves.

4 ~~114.174.~~ Based not only on Westland's investment in the Properties, but also in the
5 local community, Westland would be irreparably harmed, if a receiver is put in place.

6 **Grandbridge's Servicing of the Loans since the Assumption**

7 ~~115.175.~~ Upon information and belief, after Westland disclosed to Grandbridge and
8 Fannie Mae that the Shamrock Entities' financial statements failed to provide accurate
9 occupancy rates for the Properties, the loans and Grandbridge's underwriting came under greater
10 scrutiny from Fannie Mae.

11 ~~116.176.~~ Upon information and belief, Fannie Mae for the first time recognized that
12 Grandbridge's underwriting for the Properties was insufficient and did not comply with Fannie
13 Mae guidelines.

14 ~~117.177.~~ More specifically, uUpon information and belief, Fannie Mae for the first
15 time recognized that the loan had been underwritten despite it violating Fannie Mae's credit and
16 underwriting criteria credit and underwriting criteria, because, *inter alia*, the two properties had
17 excessively high crime rates, the properties were subject to a prior Fannie Mae REO sale, and the
18 income for the Properties was overstated.

19 ~~118.178.~~ Upon information and belief, Fannie Mae demanded for Grandbridge to
20 either provide additional reserve funding as security or for Grandbridge to obtain additional
21 security from the borrower on the Loans.

22 ~~119.179.~~ Upon information and belief, Grandbridge decided that it would push th~~ate~~
23 obligation onto Westland.

24 ~~120.180.~~ Based on the assumption agreement that Liberty LLC and Square LLC
25 executed, any effort by Grandbridge and/or Fannie Mae to adjust the deposits required from
26 Westland had to be administered consistent with the terms of the Multifamily Loan and Security
27 Agreement signed by the Shamrock Entities (the "Loan Agreements") for each Property.

28 **The Loan Agreements' Requirements for Adjustments to Deposits**

1 ~~121.181.~~ Section 13.02(a)(3) of the Loan Agreements governs *adjustments to*
2 *deposits* and permits such adjustments under only two limited circumstances: 1) after a property
3 condition assessment is performed on loans with a term that is over 10 years long; or 2) as a
4 condition for a transfer of either the underlying real property or an entity owning the real
5 property. (Plaintiff's Complaint, Ex. 1, pages 69-70, Section 13.02(a)(3); Plaintiff's Complaint,
6 Ex. 6, pages 69-70, Section 13.02(a)(3).)

7 ~~122.182.~~ Schedule B to the Loan Agreements shows that each of the loans at issue
8 here has loan terms lasting 84 months, or seven years, so Section 13.02(a)(3)(A) does not permit
9 an adjustment to the deposits. (Plaintiff's Complaint, Ex. 1, pages 69-70, Section
10 13.02(a)(3)(A), and page 115, Schedule B [showing the 84 month loan term]; Plaintiff's
11 Complaint, Ex. 6, pages 69-70, Section 13.02(a)(3)(A), and page 115, Schedule B [showing the
12 84 month loan term].)

13 ~~123.183.~~ Even in the case of a ten-year loan, the PCA is not conducted until
14 between the sixth and ninth month of the tenth year, unless it is an affordable housing loan,
15 which ~~these are~~ is not. (*Id.*)

16 ~~124.184.~~ Otherwise, an adjustment to the deposits may only be made as a condition
17 for a transfer of either the underlying real property or an entity owning the real property, but here
18 no such condition was presented at the time that the loans were assumed. (Plaintiff's Complaint,
19 Ex. 1, pages 69-70, Section 13.02(a)(3)(B); Plaintiff's Complaint, Ex. 6, pages 69-70, Section
20 13.02(a)(3)(B).)

21 ~~125.185.~~ Fannie Mae and Grandbridge have failed to act in good faith by ignoring
22 the explicit contract term that governs when adjustments to the ~~loans~~ Loan Agreements' required
23 deposits may be required from the borrower.

24 ~~126.186.~~ Upon information and belief, the limitations on adjustments to the deposits
25 exist as a borrower protection, so that an unscrupulous servicer, such as Grandbridge, does not
26 improperly attempt to revise the deposit amounts after a loan has already been agreed upon by a
27 borrower and the borrower no longer has any recourse, because at that point the borrower would
28

1 be subject to additional costs and fees in order to arrange for alternative financing, and faces
2 foreclosure if it does not acquiesce.

3 **The Loan Terms for Property Condition Assessments**

4 ~~127.187.~~ Additionally, the Loan Agreements ~~expressly limits~~specify that limitations
5 ~~apply on~~ when a Property Condition Assessment may be conducted, namely when. ~~Such an~~
6 ~~assessment may only occur after~~ “Lender determines that the condition of the Mortgaged
7 Property has deteriorated (ordinary wear and tear excepted) since the Effective Date” of the loan.
8 (Plaintiff’s Complaint, Exhibit 1, page 39, Article 6.03(c).)

9 ~~128.188.~~ Neither Fannie Mae nor Grandbridge had any reasonable basis to
10 determine that the condition of the Properties had deteriorated in excess of ordinary wear and
11 tear from the time the loans were taken out in November 2017, and certainly not after August
12 2019 loan assumption, which is when they actually lowered the reserve amounts before Westland
13 closed on its purchase and the assumption of the loans.

14 ~~129.189.~~ Moreover, neither Fannie Mae nor Grandbridge bothered to obtain a report
15 or other information establishing the condition of the Properties at the time the loans were
16 assumed in late August 2018, despite the Loan Agreements providing for such an assessment.

17 ~~130.190.~~ Their failure to obtain such a report renders any assertion by Fannie Mae
18 and/or Grandbridge that the condition of either Property has deteriorated since the loan on the
19 Properties was assumed baseless and unsupportable.

20 ~~131.191.~~ Despite not having ~~Without~~ a valid basis in the loan documents to do so,
21 in mid-2019, Grandbridge’s representatives, individually and as an agent/servicer for Fannie
22 Mae, demanded access for a property assessment by the Texas-based f3, Inc.

23 ~~132.192.~~ Despite that the Loan Agreements provides a Property Condition
24 Assessment will be conducted “at Borrower’s expense” when it is warranted by the Loan
25 Agreements. (Plaintiff’s Complaint, Exhibit 1, page 39, Article 6.03(c).) However~~Moreover,~~
26 Fannie Mae and Grandbridge knew that they were improperly seeking a Property Condition
27 Assessment report, because prior to conducting the property condition assessment, during a
28 phone call in July 2019, Grandbridge’s Senior Vice President of Loan Servicing and Asset

1 Management Joe Greenhaw represented that Westland would not be required to pay the cost of
2 the assessment if Westland agreed to provide f3, Inc. PCA access to the Properties, ~~despite that~~
3 ~~the Loan Agreements provides a Property Condition Assessment will be conducted “at~~
4 ~~Borrower’s expense” when it is warranted by the Loan Agreements. (Plaintiff’s Complaint,~~
5 ~~Exhibit 1, page 39, Article 6.03(e).)~~

6 ~~133.193.~~ Mr. Greenhaw also represented that if any deficiencies were found,
7 Westland would only be required to provide a small addition to the reserve accounts, consistent
8 with deferred maintenance scheduling practices then in place, which would ~~stretch the depositing~~
9 ~~of amortize~~ the cost of any repairs required over the life of the loans.

10 ~~134.194.~~ Based on Mr. Greenhaw’s representations, Westland provided f3, Inc.
11 access to conduct a property condition assessment.

12 ~~135.195.~~ Had Mr. Greenhaw, Grandbridge, or Fannie Mae been honest about their
13 intentions, Westland would not have provided access to f3, Inc. for a property condition
14 assessment, because there was no requirement to do so based on the Loan Agreements.

15 ~~136.196.~~ Upon information and belief, Fannie Mae and its servicers do not utilize
16 f3, Inc. for PCA reports issued before a loan closes, but f3, Inc. is one of their preferred vendors
17 when Fannie Mae and Grandbridge want a report to support a demand for additional repair and
18 replacement reserve funding.

19 ~~137.197.~~ Not surprisingly then, f3, Inc., provided a skewed and inflated assessment
20 designed to cover for Grandbridge’s prior poor underwriting at the Properties.

21 ~~138.198.~~ The PCA resulted in those inflated values because f3, Inc. was employed
22 to, and in fact did, utilize a far different standard than the lenient standard employed by CBRE
23 when it was to Grandbridge’s and Fannie Mae’s benefit to have lower reserve numbers.

24 ~~139.199.~~ In contrast to CBRE, which inspected a random 10% of the units at each
25 Property, f3’s inspections were consistent with a stated agenda by servicer Grandbridge and
26 Fannie Mae.

27 ~~140.200.~~ f3 noted that it inspected 352 of the 720 units at the Liberty Property,
28 which amounted to 48.9% of the units, and 211 of the 409 units at the Square Property, which

1 amounted to 51.6% of the units, including nearly every vacant unit at both Properties. Consistent
2 with Grandbridge's design, the inspections were performed or replacement costs to serve as the
3 basis for an improper adjustment of reserve deposits. (Plaintiff's Complaint, Ex. 11, page 7 and
4 315.)

5 ~~141.201.~~ Further, in contrast to CBRE's depreciation schedule for the Liberty
6 Property that required \$300 per unit/per annum, which was increased to \$354 per unit per annum
7 when accounting for inflation (Exhibit D, at 6, 10), f3, Inc. recommended a monthly fee of \$406
8 per unit per annum, which amounted to \$446 when accounting for inflation. (Plaintiff's
9 Complaint, Ex. 11, pages 334.)

10 ~~202.~~ Likewise, in contrast to CBRE's depreciation schedule for the Square Property
11 that required \$210 per unit/per annum, which was increased to \$248 per unit per annum when
12 accounting for inflation (Exhibit E, at 6, 10), f3, Inc. recommended a monthly fee of \$312 per
13 unit per annum, which amounted to \$342 when accounting for inflation. (Plaintiff's Complaint,
14 Ex. 11, page 23.)

15
16 ~~142.203.~~ For scheduled maintenance on the same depreciable items identified in
17 two inspections around a year apart there is no reason for the Liberty Property to have a \$92, i.e.
18 25.6% increase in reserves per door; or the Square Property to have a \$94, i.e. 37.9% increase
19 per door. f3's numbers increased despite the tens of thousands of dollars Westland had already
20 invested in the Properties to fix them up, particularly as units turned over. It is clear not only that
21 f3 used a totally different standard than the inspection report that was part of the inducement to
22 have Westland assume these non-performing loans from Shamrock, it is equally clear that f3 was
23 given and executed an agenda, and did not undertake an independent assessment of the
24 Properties' condition.

25 ~~143.204.~~ Had the same standard been employed at the time of the loans' initial
26 property condition assessment, or during a property condition assessment at the time of the
27 assumption, the Shamrock Entities would have been responsible to pay those costs. And, if
28 neither Grandbridge nor Fannie Mae required an additional deposit from the Shamrock Entities

1 at that time, then Westland would have required either an adjustment to the purchase price that it
2 paid Shamrock or required Shamrock to fully fund the lender's adjustment to the reserve deposit.
3 Had Westland known it would be held to a higher standard after closing than Shamrock was
4 helped to before and during the assumption period, then these protections would have been a
5 condition to completing the loan assumption or Westland would not have completed the
6 purchase and loan assumption at all. Instead, Fannie Mae and ~~Grandview~~ Grandbridge changed
7 the rules after the fact.

8 144.205. Based on the f3, Inc. assessment, a demand was made for Westland to
9 deposit an additional \$2,~~706,845,150,980~~.00 (\$1,~~507,098,753,145~~.00 for the Liberty Property and
10 \$1,~~199,092,052,835~~.00 for the Square Property) into reserves.¹¹

11 145.206. The f3, Inc. report identified those deposits as repair reserve items.¹²

12 146.207. When Westland objected and advised Fannie Mae and Grandbridge that
13 their actions seemed in bad faith because Westland had already spent \$1.8 million on capital
14 expenditures that improved the condition of the Property, which caused the condition of the
15 Properties to have improved, not deteriorated, Defendants responded with a non-specific default
16 notice letter in December 2019.

17 147.208. And, even though Westland objected to placing those funds into reserve
18 accounts due to the fact that Grandbridge has routinely failed to respond to any reserve
19 disbursement request,¹³ Westland has still performed the vast majority, if not all of the items

21 ¹¹ While the demand was for \$2.85 million, the amount of new funding requested was lower, because Grandbridge
22 provided it would move \$246,047 from the Liberty Replacement Reserve and \$106,217 from the Village
Replacement Reserve, or a total of \$352,264, which would make the new money demand \$2,493,716.

23 ¹² Upon information and belief, Grandbridge and Fannie Mae recognized that the physical conditions listed in the f3,
24 Inc. PCAs were not the types of items previously listed in the repair schedules, and on that basis at the time of
25 default attempted to recast those amount as an addition to the replacement reserve in the Notice of Default and
Acceleration of Note, despite that Grandbridge had specifically transferred funds from the interest bearing
replacement reserve to the non-interest bearing repair reserve. (Pl. Complaint, Exhibit 13, at page 1 [listing
purported defaults]; cf. Pl. Complaint, Exhibit 12, at page 2 [transferring funds to repair reserve escrow].)

26 ¹³ For instance, at the time of acquisition of the Properties, two buildings at Liberty Village were damaged by fires,
27 which rendered them complete losses. The insurance carrier issued joint checks for the nearly \$1 million that it cost
28 to restore those buildings. All of the funds from the carrier ~~have-been~~ were held by Grandbridge ~~since~~ from that time
until May 2021, which was months after the Court entered a preliminary injunction requiring that the funds be
disbursed in November 2020, and Westland funded the full cost to completely restore those buildings. Still, nothing
was received in response to Westland's reserve disbursement request, despite those funds being specifically

1 identified in the September 2019 PCA reports for both Properties over the course of the past
2 year, and has continued fully to perform on the loans.

3 ~~148.209.~~ As such, based on Fannie Mae's and Grandbridge's deceptive practices, it
4 would be improper to permit Fannie Mae and Grandbridge to continue to utilize the improperly
5 obtained f3, Inc. property condition assessment.

6 **The Loan Terms for Additional Lender Reserves and Replacements**

7 ~~149.210.~~ Additionally, instead of utilizing the applicable section of the Loan
8 Agreements dealing with adjustments to deposits, namely Article 13.02(a)(3), Fannie Mae and
9 Grandbridge asserted a default based on Section 13.02(a)(4) regarding insufficient funds in
10 reserve accounts, without clearly identifying the mechanism by which they assert that such an
11 "increase in the Replacement Reserve Account" is warranted.

12 ~~150.211.~~ The reason for the lack of clarity is simple, their demands for adjustments
13 to the deposits violate the Loan Agreements.

14 ~~151.212.~~ Specifically, Section 13.02(a)(4) is a vague catch-all section of the Loan
15 Agreements that deals with additional deposits for Replacement Reserves, Required Repairs,
16 Additional Lender Repairs, Additional Lender Replacements and Borrower Requested Repairs.

17 ~~152.213.~~ Westland has not submitted any request for disbursements related to a
18 "Borrower Requested Repair," which is a defined term in the Loan Agreements that only arises
19 when a borrower asks for a disbursement for items other than those appearing on a schedule, but
20 with such disbursement request it is clear that no such deposit is required from the Westland.

21 ~~153.214.~~ The Required Repairs Escrow was fully funded at the time the initial loan
22 was funded, no additional Required Repairs deposit was mandated at the time the loans were
23 assumed, and there was, and is, no basis for Fannie Mae to assert that the amount escrowed for
24 such repairs was insufficient because at the time of the loan assumption Fannie Mae and
25

26
27 earmarked for restoring the buildings associated with the fires. As such, *Grandbridge ~~has~~ improperly withheld \$1*
28 *million of Westland's funds, which Lenders only returned after Westland filed and OSC Re: contempt to get them to*
do so.

1 Grandbridge recognized that all such repairs had been performed other than a \$9,375.00 reserve
2 related to refinishing the sport courts at the Liberty Property (Exhibit J, at 7; Exhibit K, at 7.)

3 ~~154.215.~~ Notably, the only cost remaining in the repair reserve at the time of the
4 assumption of the Loan Agreements, for sport court related repairs, remains fully funded –
5 specifically, \$9,375.00 remains in the Required Repair Escrow for that purpose, even though the
6 repair has been completed.

7 ~~155.216.~~ Likewise, Schedule 1 of each Loan Agreement, which defines “Additional
8 Lender Repairs” as “*repairs of the type listed on the Required Repair Schedule* but not otherwise
9 identified thereon . . . to keep the Mortgaged Property in good order and repair (ordinary wear
10 and tear excepted)” effectively prohibits any request for additional reserves, because
11 Grandbridge and Fannie Mae have admitted that no such repairs remained outstanding.
12 (Plaintiff’s Complaint, Ex. 1, Schedule 1, page 93; Plaintiff’s Complaint, Ex. 6, Schedule 1, page
13 93. [emphasis added].)

14 ~~156.217.~~ Nonetheless, the PCA conducted by f3, Inc., demands a deposit of
15 approximately \$2.~~7~~85 million dollars for “immediate repairs.”

16 ~~157.218.~~ \$1,908,760 of those “immediate repairs” were related to “turning” vacant
17 apartments into rent ready units, which was an expense that was clearly not addressed in any
18 prior schedule at the time of the initial loan or at Westland’s ~~the~~ assumption.

19 ~~158.219.~~ Instead, the prior report by CBRE stated that such costs were expected to
20 be handled in the ordinary course of business as opposed to part of the reserve process.

21 ~~159.220.~~ The remaining “repair” items either were not addressed in any schedule, or
22 were of a type that was addressed in the original replacement reserve schedule by an addition to
23 the monthly debt service charges.

24 ~~160.221.~~ As to deposits under the Replacement Reserve, it would be improper to
25 require an immediate deposit, because no immediate deposit was required for any such expense
26 at the Square Property either upon the initial closing of the loan or upon its assumption.

27 ~~161.222.~~ To now demand over one million dollars (\$1,000,000) of reserves for only
28 the Square Property related to such depreciable costs, on items such as roofs, boilers and turning

1 vacant units, after the passage of only one year seems disingenuous at best, and instead reveals
2 that a different condition standard ~~is-beingwas~~ used, apparently to cover up ~~Grandview's~~
3 ~~Grandbridge's~~ poor underwriting of the loans ~~from-to~~ a weaker borrower (Shamrock) in the first
4 place.

5 ~~162-223.~~ Of course changing the rules after closing a deal is not permitted. Here,
6 using a different standard is directly contrary to Schedule 1 of each Loan Agreement that defined
7 the term "Additional Lender Replacements" to mean "*replacements of the type listed on the*
8 *Required Replacement Schedule* but not otherwise identified thereon . . . to keep the Mortgaged
9 Property in good order and repair (ordinary wear and tear excepted)." (Plaintiff's Complaint, Ex.
10 1, Schedule 1, page 93; Plaintiff's Complaint, Ex. 6, Schedule 1, page 93. [emphasis added].)

11 ~~163-224.~~ Based on the depreciation~~ionble~~ schedule associated with such costs it is
12 insupportable to demand that the entire cost of such items would be advanced to the present.
13 Rather, such costs are naturally consistent with funding through inclusion on a monthly debt
14 service obligation payment designed to match the depreciation schedule of the underlying asset.

15 ~~164-225.~~ Likewise, deviating from the depreciation schedule agreed when the loans
16 funded is improper for both Properties, because the underlying depreciation schedules for the
17 same assets should not have changed, and did not change when Westland assumed the two loans.

18 ~~165-226.~~ Notably, each definition of additional repairs, additional replacements, and
19 conditions that justify performing a property condition assessment provides that "ordinary wear
20 and tear [is] excepted," but the vast majority of the items Servicer seeks a deposit for are items
21 related to "ordinary wear and tear" within vacant units, which is thereby precluded by the
22 definitions contained in the Loan Agreements.

23 ~~166-227.~~ Additionally, Servicer's demand is improper because the definitions for
24 Additional Lender Repair and Additional Lender Replacement are limited to repairs or
25 replacements "of the type listed" on the two schedules attached to the Loan Agreement.

26 ~~167-228.~~ However, even ignoring the language of the defined terms from the Loan
27 Agreement, it is clear that the amount included in the original schedules for the Liberty Property
28 and Square Property which totaled \$560,187.00, or 1.5% of the loan balance are not of the same

1 type or substantially equivalent to the additional reserve funding that Fannie Mae and
2 Grandbridge seek in the amount of \$2,~~706,845,150~~980.00 or ~~7.0542~~% of the loan balance, after
3 only one year has passed, and both Properties, by any objective measure are much improved and
4 the collateral is much more valuable than when Westland assumed the loans.

5 ~~168,229.~~ Perhaps even more alarming is that the figures for the calculation of
6 monthly reserve allocations payments changed dramatically as well. Based upon Westland's
7 substantial investment in and improvements made to both Properties, tThe monthly reserve
8 allocations should actually have gone down ~~remained the same~~ if the same standard had been
9 used.

10 ~~169,230.~~ As such, the factual circumstances evidence that Fannie Mae and
11 Grandbridge's assertion of a default is baseless, because there is no demonstrable deterioration in
12 the condition of the Properties.

13 **The Abandoned Default**

14 ~~170,231.~~ Notably, this is not the only baseless default that Fannie Mae and
15 Grandbridge have ~~made~~claimed, because they also initially cited a default based on "Borrower's
16 [] failure to maintain the Mortgage Property in accordance with Article 6 of the Loan
17 Agreement." (Ex. 13, page 1.)

18 ~~171,232.~~ However, if it was based on the failure to make repairs, that purported
19 default was disingenuous because Fannie Mae and Grandbridge never provided Westland an
20 opportunity to perform repairs, as contemplated by the Loan Agreements, prior to making their
21 \$2.~~785~~ million demand to place funds into escrow.

22 ~~172,233.~~ Upon information and belief, such an assertion of a default was in bad
23 faith, because Article 6 is six pages in length, and after Westland's request for further
24 information on the purported default, including the identification of the section breached, neither
25 Grandbridge nor Fannie Mae ever provided any response.

26 ~~173,234.~~ Upon information and belief, Fannie Mae and Grandbridge have
27 abandoned that baseless claim, because it does not appear as a basis for relief in the Complaint.

28 **The Purported Default**

1 ~~174-235.~~ On or about October 18, 2019, Michael Woolf of Grandbridge forwarded
2 a letter to each Westland entity, which recounted that a Property Condition Assessment was
3 performed on September 9 through 11, 2019, and included “a schedule of needed repairs” as an
4 attachment.

5 ~~175-236.~~ The letter stated that the various physical conditions at the Properties
6 amounted to Additional Lender Repairs and Additional Lender Replacements under the Loan
7 Agreements, and that Grandbridge would require Westland to “execute an Amendment to the
8 Loan Agreement reflecting the amendment and restatement of the” repair and replacement
9 reserve schedules that were attached to the Loan Agreement.

10 ~~176-237.~~ Based on that demand for Westland to execute new replacement and repair
11 reserve schedules, it was stated that Westland would need to deposit \$1,753,145 to the Liberty
12 Property repairs escrow account, and \$1,092,835.00 to the Square Property repairs escrow
13 account.

14 ~~177-238.~~ Further, the letter noted that Grandbridge would be transferring 75% of the
15 balance from the interest bearing Replacement Reserve account balance to the non-interest
16 bearing Repair Reserve account.

17 ~~178-239.~~ Based on those transfers, Westland would be deprived of the interest that
18 would normally accrue to the \$246,047.00 transferred from Replacement Reserve at the Liberty
19 Property and to the interest normally accruing on the \$106,217 for the Square Property.

20 ~~179-240.~~ Grandbridge and/or Fannie Mae took those actions in bad faith.

21 ~~180.~~ On November 1, 2019, Westland requested an extension of time to consider the
22 request, so it could evaluate the PCA reports and formulate a response without interfering with
23 Jewish holidays.

24 ~~181-241.~~ However, ~~m~~Minutes later, Grandbridge and/or Fannie Mae refused this
25 request for a little bit more time.

26 ~~182-242.~~ On November 13, 2019, Westland contested the demand, noted that the
27 requested adjustments to the reserves was improper, and gave a list of reasons why. Westland
28

1 also advised that it would agree to engage in an open dialogue to attempt to obtain a resolution.
2 (Exhibit Q, Letter of John Hofsaess, dated November 13, 2019.)

3 ~~183.243.~~ In response to Westland's letter, prior to the November 18, 2019, deadline
4 for a deposit, Grandbridge stated that Westland would have to place the full amount of the
5 requested reserves into escrow or face a Default, refused to extend Westland's time for a
6 response, and intimated that had Westland forwarded a plan to meet the demand additional time
7 could have been provided, even though no request for a plan had previously been made in the
8 demand letter or prior communications with Grandbridge.

9 ~~184.244.~~ After Grandbridge refused to have any substantive conversation with
10 Westland or to extend its time to respond to the demand, Westland requested to speak directly
11 with Fannie Mae prior to November 18, 2019, but Westland did not receive any further response
12 to its inquiry prior to November 18, 2019.

13 ~~185.245.~~ After November 18, 2019, Fannie Mae and Grandbridge refused to have
14 any discussion of the proper amount of reserve funding unless Westland signed a pre-negotiation
15 letter, which would require Westland to admit to a default.

16 ~~186.246.~~ ~~On an effort to pacify Grandbridge and Fannie Mae,~~ on November 28,
17 2019, Westland forwarded a letter containing Westland's Strategic Plan for the Properties, which
18 designated a budget for any outstanding repairs, and addressed that many of the requested repairs
19 had already been performed.

20 ~~247.~~ On or about December 21, 2019, Westland received a default letter, dated
21 December 17, 2019, with the above-referenced purported defaults.

22 **Lenders' Improper Servicing and Discrimination**

23 ~~187.248.~~ On December 23, 2019, Westland submitted a letter to Fannie Mae's
24 counsel requesting additional details, including an identification of the specific sections of the
25 loan agreements that had been violated, but no response was ever received. (Exhibit R, Letter of
26 John Hofsaess, dated December 23, 2019.)

27
28

1 ~~188,249.~~ On January 6, 2020, after not having received a response to the December
2 23, 2019, Westland again sought further clarification, but no clarifying response was ever
3 received. (Exhibit S, Letter of John Hofsaess, dated January 6, 2020.)

4 ~~189,250.~~ Instead, Fannie Mae and Grandbridge only forwarded a pre-negotiation
5 letter with unacceptable terms, including which unilateral dictate terms for were required by
6 Fannie Mae to even enter into a potential discussion of the proper amount of reserves.

7 ~~190,251.~~ When Westland requested that Grandbridge agree to make adjustments to
8 the draconian requirements of the pre-negotiation letter, Fannie Mae and Grandbridge refused.

9 ~~191,252.~~ Despite declaring a default on or about December 17, 2019, Grandbridge
10 and Fannie Mae continued, consistent with the Loan Agreements, and previous practice, to
11 remove an ACH payment from Westland's account for the month of January 2020.

12 ~~192,253.~~ However, in February 2020, in an apparent attempt to create a financial
13 default, where no such default previously existed, without prior notice, Grandbridge did not
14 remove any ACH payment for February 2020, as it had been doing for months, and as had been
15 requested by ~~Grandview~~Grandbridge, and agreed to by Westland as its method of paying the
16 loans each month.

17 ~~193,254.~~ When Westland realized the monthly debt service obligation payment was
18 not timely withdrawn on or about February 4, 2020, Westland contacted the loan servicer,
19 requested a billing statement, and the loan servicer's representative responded that a statement
20 would be sent.

21 ~~194,255.~~ The loan servicer never responded further, nor did it provide any billing
22 statement as promised, until after ordered by this Court to do so through the preliminary
23 injunction order that was entered during November 2020.

24 ~~195,256.~~ As such, on February 10, 2020, without any response from the loan
25 servicer at that time, Square LLC issued a check for \$58,471.94, and Liberty LLC issued a check
26 for \$180,621.79, which approximated the amount of the last monthly debt service obligation
27 payment plus 10%.

28

1 257. Every month ~~since~~between February 2020 and December 2020, Square LLC and
2 Liberty LLC ~~have~~ forwarded the loan servicer a check for \$58,471.94 and \$180,621.79
3 respectively to approximate the amount of the last monthly debt service obligation payment plus
4 10%. The loan servicer ~~has~~ accepted those funds, and legal counsel for the lender has confirmed
5 receipt of each of those payments in a series of non-waiver letters. (See e.g., Exhibit T, Lender’s
6 counsel’s Non-Waiver Letters, dated February 19, 2020 (February 2020 payment), March 11,
7 2020 (March 2020 payment), June 4, 2020 (April, May & June 2020 payments) August 12, 2020
8 (July & August 2020 payments).)

9 258. Still, despite all initial payments, scheduled reserve payments and monthly debt
10 service payments having been made, and without providing any evidence of deterioration in the
11 condition of the Mortgaged Property, Lenders refused to recognize that no default had occurred.

12 259. Approximately eighteen months have passed, since Westland’s December 2019
13 and January 2020 letters that requested further information on the purported default, or at “a
14 minimum the specific subsection number and other identifying information” Lenders asserted
15 was breached, but Lenders still have not provided any response with greater details on the basis
16 for the purported breach in Article 6 of the Loan Agreements, which is a six (6) page densely
17 worded section of the Loan Agreement, and as such should be deemed to have refused to set
18 forth the precise basis for the alleged default.

19 260. Instead, Lenders engaged in coercive and overbearing tactics to assert improper
20 pressure on Westland, including but not limited to placing all Westland-related entities, even
21 those with no relationship to the two properties at issue on a “blacklist” status known as “a-
22 check.” By placing Westland and the Westland-related entities on “a-check” it meant that no
23 Westland related entity was able to obtain any new financing through Fannie Mae, and Westland
24 had to disclose to other lenders that Fannie Mae asserted it had a loan in default, even though the
25 default was contested by Westland.

26 **The Lender-Required SPE Structure**

27 261. Generally, Fannie Mae and mortgage lenders require that the borrower on a
28 mortgage loan have a single purpose entity (“SPE”) structure, which is a legal entity created to

1 hold title to real property and that is limited from engaging in any business not related to the
2 rental of the mortgaged property identified in the loan agreement.

3 262. Here, Lenders required Liberty LLC and Square LLC to use an SPE structure, by
4 requiring that they be entities that had no other assets or liabilities other than those associated
5 with the one particular piece of real estate to which each loan was related.

6 263. Lenders required use of the SPE structure to meet the narrow, specific objective
7 of isolating the real estate assets securing the Loan Agreement from liabilities that might
8 adversely affect the other Westland-affiliated owners, shareholders, and/or parent companies as a
9 whole.

10 264. Lenders also required those Westland-affiliated owners, shareholders, and/or
11 parent companies to: act as guarantors, share the guarantor's financial information with Lenders,
12 and share the borrower's sources of cash used to buy the Properties.

13 265. As such, prior to the August 29, 2018 closing, Westland was required to provide
14 the document entitled Summary of Sources of Cash, and supporting documentation, which listed
15 AFT NV as the primary contributor of funds for the borrowing entities, and showed the financial
16 security holdings of the Westland Securities Entities.

17 266. As such, Lenders knew that Liberty LLC and Village LLC, as the borrowing
18 SPEs, had each received funds for the initial down payment used to purchase the Properties from
19 the commonly-owned Westland Securities Entities, including from AFT NV, Dynasty Trust, and
20 the Alevy Descendant's Trust, which were specifically required by the Lenders to be guarantors
21 for the Westland borrower's two loans at issue in this case.

22 **The COVID-19 Pandemic**

23 267. In March 2020, the COVID-19 pandemic hit the United States, which caused
24 substantial uncertainty for individuals, companies, governments, and the financial markets,
25 including Westland, the Westland Credit Facility Entities and the Westland Securities Entities.

26 268. Upon information and belief, during four trading days in March 2020, the "Dow
27 Jones Industrial Average (DJIA) plunged 6,400 points, an equivalent of roughly 26%. The crash
28 was caused by the governmental/market's reaction to a novel coronavirus (COVID-19), a disease

1 which originated in the Chinese city of Wuhan in December 2019 and quickly spread around the
2 world causing a pandemic.”¹⁴

3 269. The Westland Securities Entities, including Amusement, AFP Trust, Westland
4 AMT, AFT NV, and Dynasty Trust, were not immune to the dramatic market fluctuations, and
5 overall financial securities market decline.

6 270. The Westland Securities Entities each owned a significant portfolio of financial
7 securities, and a significant amount of those holdings were held on margin.

8 271. During March 2020, when the markets fluctuated so dramatically, the Westland
9 Security Entities had more than \$27,211,000 of margin calls.

10 272. In response, the Westland Securities Entities were required to put up sufficient
11 additional cash to cover those margin calls, and to do so the Westland Securities Entities
12 liquidated financial securities during March 2020.

13 273. When liquidating securities for margin calls, the total value of the securities held
14 decreases, and based on market conditions during March 2020, the Westland Security Entities
15 were required to liquidate securities valued at nearly twice the amount of the margin call.

16 274. The financial securities that were required to be liquidated due to margin calls
17 have increased in value by tens of millions of dollars, the exact amount of which increase will be
18 determined at trial.

19 275. When making loans and contributions to other closely-held and commonly-owned
20 Westland-related entities, the Westland Securities Entities depended on those entities being able
21 to later borrow against the real property acquired to be able to quickly return such funds based on
22 the appreciation of the real property owned.

23 276. Being able to utilize the appreciation of the real property that is owned by
24 Westland and the Westland-related entities allows them to utilize their combined financial capital

25
26
27 ¹⁴ Mazur, Mieszko, et al., Finance Research Letters, Jan 2021; 38: 101690, US National Library of Medicine
28 National Institutes of Health, Elsevier Public Health Emergency Collection, at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7343658/> (showing market volatility during March 2020 of the
DJIA, which is a commonly used index that functions as a quick proxy for the large capitalization financial markets..

1 to fund further growth and to engage in effective risk balancing by diversifying assets in the real
2 estate and financial markets, which reduces the effect of volatility in any one market.

3 277. The margin calls that occurred during March 2020 were the result of instability
4 caused by the COVID-19 pandemic, which caused a financial market collapse, is the type of
5 market risk that the Westland Security Entities had planned to have a reserve available through
6 the use of borrow up loans and lines of credit by entities such as the Westland Credit Facility
7 Entities.

8 278. Specifically, the Westland Securities Entities made inter-company loans and
9 contributions, to the Westland Credit Facility Entities directly, and indirectly through loans and
10 contributions made to the Westland Credit Facility Entities' owning entities.

11 279. However, the ability of those Westland-related entities to return funds was
12 foreclosed in March 2020 by Lenders' actions related to the purported default in this matter, and
13 specifically because they put the Westland Securities Entities on a-check and cut off their credit
14 facility.

15 280. Upon information and belief, in December 2019, contemporaneously with the
16 purported default Fannie Mae placed Westland, the Westland Securities Entities and Westland
17 Credit Facility Entities on "a-check" and improperly discriminated against any Westland-related
18 entity for new loans, draws on existing lines of credit, and re-financing applications.

19 **Discriminatory Lending Practices & the Master Credit Facility Agreement**

20 281. In fact, six Westland-related entities, namely Amusement, Corona, Amber,
21 Hacienda, 1097 North, Tropicana, and Vellagio, described above as the Westland Credit Facility
22 Entities, had already ensured that funds were available to meet Counterclaimants' need in the
23 event of a financial market collapse.

24 282. Specifically, on March 15, 2019, the Westland credit Facility Entities entered into
25 a Master Credit Facility Agreement (the "MCFA") with loan servicer Wells Fargo Bank, NA
26 ("Wells"), as a lender, which could be used as an additional cash resource.

27 283. Before entering into the MCFA, the Westland Credit Facility Entities were
28 required to submit an application, vetted according to Fannie Mae's underwriting criteria, were

1 charged legal fees for underwriting, were charged costs for appraisals, and were required to pay
2 additional loan issuance costs.

3 284. As part of that application and vetting, Fannie Mae reviewed the Westland Credit
4 Facility Entities financial statements, and the financials of their affiliated owners, shareholders,
5 and/or parent companies, who were required to act as guarantors and share their financial
6 information, including but not limited to guarantors Amusement, the Alevy Descendant's Trust,
7 and the AA 2015 Dynasty Trust B.

8 285. After being fully vetted, the Westland Credit Facility Entities were approved by
9 Wells, and Fannie Mae confirmed that it would purchase the MCFA related notes, so that the
10 Westland Credit Facility Entities could receive funds via the credit facility.

11 286. The initial advance under the MCFA was for \$97,789,000.

12 287. The MCFA contractually obligated the lender to extend certain funds to the
13 Westland Credit Facility Entities, as Future Advances consistent with the MCFA and agreed
14 upon schedule.

15 288. The same day the MCFA was executed by Westland, Wells entered into an
16 assignment agreement, which assigned the lender's benefits and obligations in the MCFA to
17 Fannie Mae.

18 289. The terms of the MCFA provided that "any Future Advance . . . and any
19 Conversion of an Advance shall be subject to the precondition that Lender must confirm with
20 Fannie Mae that Fannie Mae is generally offering to purchase in the marketplace advances of the
21 execution type requested by Borrower at the time of the Request and at the timer the rate for such
22 Advance is locked." In such an event, if Fannie Mae was no longer purchasing advances of the
23 same type, Wells Fargo would seek an alternative advance consistent with the type then offered,
24 which would be conditioned on Wells approval through Fannie Mae, "except for a Borrow Up
25 provided in the proviso of Section 2.02(c)(2)(B)."

26 290. The terms for a borrow up made clear that Future Advances addressed by new
27 offerings (discussed in the prior paragraph) that involved an "Addition of Additional Mortgaged
28 Properties" ("Additional Mortgage Advance") were discretionary.

1 291. However, a “Borrow Up” based on appreciation in the value of the mortgaged
2 property that was already part of the MCFA would be made so long as there was “compliance
3 with the terms of the Future Advance Schedule and the Underwriting and Servicing
4 Requirements subject to the terms of this Section 2.02(c)(2) and Section 2.02(b) where the
5 Valuations of the Mortgaged Properties will be based on Appraisals ordered by Lender and paid
6 for by Borrower” (“Borrow Up Advance”), which advances were non-discretionary.

7 292. Those terms provided in part that the Westland Credit Facility Entities were able
8 to seek a Future Advance not more than one time per year during the first five years of the
9 MCFA, and not more than a total of three times during those first five years.

10 293. Schedule 14 to the MCFA was the Future Advance Schedule, and Form
11 6001.MCFA was the Future Advance Request form, which together permitted Future Advances
12 based on the following terms provided that:

- 13 a. The Future Advance would be for a minimum of \$5 million, with a total of all
14 advances not exceeding \$125 million;
- 15 b. A Borrow Up Advance required that Coverage and LTV Tests be met, based
16 on a desk appraisal, and that all Underwriting and Servicing Requirements be
17 satisfied;
- 18 c. An Addition Advance required the underwriting of Mortgaged Property
19 Addition Schedule be satisfied; and
- 20 d. “Lender’s determination that the proposed borrower, key principal, and
21 guarantor meet all of Lender’s eligibility, credit, management and other
22 standards customarily applied by Lender in connection with the origination or
23 purchase of similar mortgage finance structures on similar Multifamily
24 Residential Properties at the time of the Future Advance Request for the
25 Future Advance”;
- 26 e. Submission of an additional variable or fixed rate note;

1 f. Payment of an Additional Origination Fee for Addition Advance or a non-
2 refundable Re-Underwriting Fee for a Borrow Up Advance, as well as legal
3 fees, related costs, and that a “request opinion” was obtained; and
4 g. Receipt of “Property-Related Documents” if applicable.

5 294. Pursuant to the MCFA, the Westland Credit Facility Entities were able to seek a
6 Borrow Up Advance on March 15, 2020, because the MCFA was originated on March 15, 2019.

7 295. The Westland Credit Facility Entities began preparation for such an advance
8 during November 2019, and knew that the Mortgaged Property securing the MCFA had
9 substantially appreciated so that it would allow a Future Advance equal to the full \$125 million
10 Future Advance amount, or an additional Future Advance of up to \$27,211,000.

11 296. Nonetheless, in December 2019, the Westland Credit Facility Entities were
12 advised that Fannie Mae refused to extend funds for a Borrow Up Advance, even though
13 contractually obligated to do so, and the sole stated reason for Fannie Mae’s refusal to extend
14 funds was the disputed default in this matter that resulted in all Westland-related entities being
15 wrongfully placed on a-check.

16 297. Being wrongfully placed on “a-check” meant that when any lender, servicing
17 agent, or DUS lender attempted to underwrite, refinance, or borrow up on loans for Westland,
18 the Westland Credit Facility Entities, other Westland affiliated entities, their key principals, and
19 their guarantors, they were automatically deemed to no longer met Fannie Mae’s “eligibility,
20 credit, management and other standards customarily applied by Lender in connection with the
21 origination or purchase of a similar mortgage finance structure[.]”

22 298. Moreover, between early 2020 and July 2021, additional Westland affiliated
23 entities, made new loan and/or refinance inquiries with mortgage brokers related to obtaining a
24 loan through Fannie Mae, but were told they were on “a-check,” so they were not eligible to get
25 a loan through Fannie Mae.

26 299. As such, Fannie Mae continued to enjoy full performance by the Westland Credit
27 Facility Entities, including the timely receipt of all MCFA loan payments, maintenance of the

1 same liens on their Mortgaged Property, and security from the same guaranty, despite Fannie
2 Mae's breach of the Future Advance provisions of the MCFA.

3 300. Fannie Mae's had no independent basis related to the Westland Credit Facility
4 Entities to breach the Future Advance provisions, and instead solely justified its breach on the
5 "a-check," because the Westland Credit Facility Entities were affiliated entities of Westland.

6 301. As such, the purported breach was a baseless assertion arising from Westland's
7 valid objection to Lenders' own unilateral modification of the Loan Agreement that required
8 Westland to place an additional \$2.85 million into reserves.

9 302. Counterclaimants had relied on the availability of the Future Advance funds
10 promised in the credit facility to provide a safety net in the event of an economic downturn, and
11 if Counterclaimants had access to the additional \$27,211,000, the Westland Securities Entities
12 would not have been required to liquidate their holdings in order to cover the March 2020 margin
13 calls.

14 **Lenders' Continuing Improper Servicing and Discrimination**

15 ~~196.303.~~ On several occasions, after the October 2019 Notice of Demand, Westland
16 has attempted to discuss the proper amount of reserve funding related to the loans, but through
17 counsel, Grandbridge and/or Fannie Mae have refused to do so without attaching conditions that
18 have in effect operated as a poison pill, including that Westland pay for all costs associated with
19 Grandbridge's attempts to increase Westland's reserve deposits despite having no such rights in
20 the Loan documents.

21 ~~197.304.~~ For instance, in June 2020, Fannie Mae's counsel relayed that Fannie Mae
22 would agree to discuss the purported default and attempt to resolve the parties' dispute, but
23 represented that they would not do so without an update regarding the Properties' status, without
24 counsel being present, without Westland continuing to make monthly debt service payments, and
25 without Westland agreeing to pay all the costs and legal fees that Fannie Mae and Grandbridge
26 had incurred in conjunction with the improper default.

27 ~~198.305.~~ Westland responded by consenting to each of those terms, other than
28 agreeing to pay the costs and legal fees ~~thate the Lendersy~~ were attempting to extract as an

1 entrance fee to enter into a discussion with Fannie Mae. ~~However, Still~~, in June 2020, Fannie
2 Mae responded that the ~~Lendersy~~ would not agree to meet without Westland agreeing to all four
3 terms. On August 13, 2020, after Westland produced over 2,300 pages of work orders showing
4 the additional work that had been done at the Properties between May 2019 and June 2020,
5 Fannie Mae's counsel provided that he would request that Fannie Mae meet without Westland
6 agreeing to pay such cost and fees. On August 24, 2020, Fannie Mae's counsel confirmed that
7 the ~~Lendersy~~ would not agree to a waiver of those costs and fees, and stated that they would
8 agree to meet only based on the application of Westland's excess monthly debt service obligation
9 payments, because Fannie Mae planned to apply those payments to costs and fees.

10 ~~306.~~ Despite Westland fully paying its monthly debt service obligations on time, and
11 its continuing to make improvements at the Properties that render the purported default notice
12 moot, and further despite both Fannie Mae and Grandbridge knowing those facts to be true, on
13 July 15, 2020, Fannie Mae's counsel illegally forwarded Westland a notice of default and
14 election to sell the Properties.

15 ~~199,307.~~ Based on the foregoing, Westland has had to ~~respond with this legal filing,~~
16 ~~in order defend itself~~ to prevent and improper foreclosure and appointment of a receiver.

17 ~~200,308.~~ Westland's legal filings are necessary to prevent Fannie Mae and
18 Grandbridge from selling or foreclosing on the Property until Westland's claims are heard on the
19 merits.

20 ~~201,309.~~ Without an injunction, Westland will be irreparably harmed by the loss of
21 the Properties, or control of the Properties to the extent a receiver is appointed.

22 ~~202,310.~~ Moreover, since Westland's purchase of the Properties, Westland has
23 expended significant additional funds and resources in relation to the Properties, in excess of
24 \$3.5 million in capital expense and related improvements alone, which would be lost by the
25 foreclosure sale.

26 ~~311.~~ ~~Finally, w~~Without Court intervention, \$20,000,000 in ~~initial purchase funds, plus~~
27 ~~any appreciation equity combined for in the value of~~ the Properties will be lost via foreclosure.
28

1 312. Additionally, Counterclaimants were required to bring this Counterclaim to
2 prevent Fannie Mae and Grandbridge from taking any adverse action against any Westland-
3 related entity on other loans due to the purported default that arose from failing to deposit an
4 additional \$2.85 million into the reserve escrow accounts, including for example by improperly
5 discriminating against the Counterclaimants on new loans, failing to honor loan-related reserve
6 disbursement requests, and failing to adhere to non-discretionary Future Advance provisions for
7 which Counterclaimants have already provided consideration.

8 **IV. SUPPLEMENTAL FACTUAL BACKGROUND & GENERAL**
9 **ALLEGATIONS AS TO THE SHAM DEFENDANTS**

10 313. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
11 preceding paragraphs as if fully set forth herein.

12 **a. Shamrock's Purchase of the Properties**

13 314. Upon information and belief, during August 2014 "Shamrock Communities LLC
14 [] a Greenwich, Conn. based multifamily real estate investment firm that was founded in 2011"
15 purchased 4870 Nellis Oasis Lane, Las Vegas, NV 89115 and 5025 Nellis Oasis Lane, Las
16 Vegas, NV 89115 from Blue Valley Apartments, Inc. ("Blue Valley").

17 315. Upon information and belief, ownership of the Properties were transferred from
18 Fannie Mae to Blue Valley on or about February 13, 2012.

19 316. Upon information and belief, Blue Valley was an entity affiliated with Fannie
20 Mae and/or Fannie Mae's officers and directors until its dissolution in September 2018.

21 317. Upon information and belief, Blue Valley owned and/or operated financially
22 distressed properties, including real estate owned ("REO") properties, and was responsible for
23 the management, operation, marketing, and sale of such properties after Fannie Mae has
24 foreclosed upon a loan.

25 318. REOs are properties owned by a lender after a borrower default and unsuccessful
26 foreclosure sale auction.

27 319. At the time Blue Valley sold 4870 Nellis Oasis Lane, Las Vegas, NV 89115 and
28 5025 Nellis Oasis Lane, Las Vegas, NV 89115 to the Sham Defendants, the Properties were still

1 in distress, had high rates of crime, and were not capable of receiving financing through Fannie
2 Mae.

3 320. Upon information and belief, Fannie Mae has a policy that it will not extend
4 financing for Properties that were previously a Fannie Mae REO, unless the Property meets
5 exhaustive criteria.

6 321. In December 2014, Shamrock Communities LLC circulated a press release that
7 represented it had substantial real estate wherewithal, by stating it had “completed seven
8 [multifamily property] acquisitions in the mid-West and West since the beginning of” 2014.

9 322. In that press release, Weinstein represented that Shamrock Communities three
10 purchases in 2014 “were distressed, bank-owned assets” that would “be repositioned and turned
11 into viable communities, in which residents will benefit from substantial upgrades and be able to
12 take pride in their surroundings.”

13 323. The press release provides that Liberty and Square would “undergo an estimated
14 \$4 million capital improvement plan” and that “[t]he properties[’] transformation will take
15 approximately 12 to 18 months to complete.”

16 324. Weinstein stated the plan was that “[a]fter extensive renovations, management
17 changes and enhanced services for tenants, we hope to attract military employees looking for
18 housing close to Nellis Air Force Base.”

19 325. Upon information and belief, shortly after or contemporaneously with the
20 acquisition of the Properties, Shamrock Communities LLC conveyed title to the Properties to
21 SHAM VI and SHAM VII.

22 326. Although the information disseminated by the Sham Defendants in press releases
23 remained publicly accessible by internet searches, the information regarding the extensive capital
24 improvement plan, the 12-18 month transition period, the plan to attract military employees and
25 transform the Properties never came to fruition and/or was false.

26 **b. The Properties’ Financing**
27
28

1 327. Based on the foregoing, the Properties were ineligible for a Fannie Mae backed
2 loan when the Sham Defendants purchased them in 2014, and remained ineligible under Fannie
3 Mae's underwriting criteria so a Fannie Mae backed loan never should have been issued in 2017.

4 328. In fact, at the time of the Sham Defendants' acquisition of the Properties in 2014,
5 those defendants obtained private financing through Pillar Multifamily LLC ("Pillar").

6 329. In lending to the Sham Defendants, Pillar was aware of the poor state of the
7 Properties, as it obtained an appraisal by Butler Burger Group, LLC, which recognized that as of
8 August 2014, "the property is 70.5% occupied having been poorly managed since it was
9 foreclosed on in 2012," which was the entire period during which it was managed by Fannie Mae
10 and its affiliate Blue Valley.

11 330. Upon information and belief, during October 2016, SunTrust Bank acquired Pillar
12 and its associated loan administration, investor services and mortgage brokerage business, named
13 Cohen Financial ("Cohen").

14 331. Upon information and belief, a primary driver in the purchase transaction was that
15 Pillar Financial had expertise in government sponsored enterprise loans, which gave SunTrust
16 access to full loan underwriting through Pillar's Fannie Mae, Freddie Mac and Federal Housing
17 Administration license transfer approval.

18 332. Based on that expertise, SunTrust/Pillar were well aware of Fannie Mae
19 underwriting criteria.

20 333. Upon information and belief, in mid to late 2017, SunTrust/Pillar evaluated the
21 Sham Defendant's loan for a potential refinance, and found it to be high risk.

22 334. Upon information and belief, SunTrust/Pillar still underwrote and issued the DUS
23 loan for the Sham Defendants in 2017.

24 335. Upon information and belief, issuing a DUS loan generated additional loan
25 issuance fees and reduced SunTrust's/Pillar's lending risk, because it would be converting a
26 direct loan, where it was 100% at risk, to a DUS loan, which Fannie Mae would securitize and
27 spread the vast majority of the lending risk either to Fannie Mae or its CMBS investors.

28

1 336. As SunTrust/Pillar and/or Cohen had serviced the loans since 2014, they knew
2 when underwriting the loans during 2017 that the Properties were not eligible for a Fannie Mae
3 loan and/or did not meet Fannie Mae’s underwriting criteria.

4 337. When underwriting the new loans, SunTrust/Pillar utilized the services of CBRE
5 to perform a PCA and appraisal of the two Properties, because it was known that CBRE utilized
6 a property condition assessment standard that was more lenient to the borrower, would minimize
7 the reserve funds required, and increase the chance a DUS loan could be issued.

8 338. Ultimately, SunTrust/Pillar underwrote the transaction through the DUS lending
9 program that did not require Fannie Mae’s prior approval, integrated the PCA criteria from the
10 CBRE PCA into its reserve schedules, failed to address that the Properties did not meet Fannie
11 Mae’s criteria related to crime, and failed to adequately review or overlooked the financial
12 information that the Sham Defendants had submitted with its re-finance application and available
13 in its own servicing files.

14 **c. The Failed 2017 Shamrock-Westland Purchase Transaction**

15 339. By email dated November 2, 2016, a real estate broker, Art Carll of NAI
16 contacted Counterclaimants; provided information on the Properties, including a mini offering
17 statement, rent rolls, and a listing of capital improvements; stated the properties were “nice” but
18 “simply mismanaged”, and inquired whether Counteclaimants had any interest in the Properties.

19 340. Within the mini offering memorandum, which the Sham Defendants intended to
20 be shared with potential purchasers, it was represented that:

21 a. The physical occupancy rate for the Liberty Village property was 82%;

22 b. The physical occupancy rate for the Village Square property was 81%;

23 c. The Liberty Village property was generating \$5,135,162 of Net Rentable Income
24 and \$3,232,170 of net operating income a year;

25 d. The Village Square property was generating \$2,287,464 of Net Rentable Income
26 and \$1,120,353 of net operating income a year;

27 341. In a further communication made on November 30, 2016, the same broker
28 showed a “surrounding properties” map, which listed 83% occupancy rates for both Properties,

1 and showed the higher occupancy rates for surrounding properties, leading the broker to state the
2 map “depict[s] how badly the asset is underperforming and where the opportunity is for you to
3 lift the asset to market conditions.”

4 342. In early 2017, Counterclaimants forwarded a Letter of Intent related to the
5 purchase of the Properties.

6 343. In response, by email dated January 10, 2017, Weinstein represented through
7 broker Art Carll that the LOI was acceptable, except that Counterclaimants would need to pick
8 up most of the closing costs and knowing that the Properties were in unacceptable physical
9 condition that “[t]he sale is As-Is with limited reps,” and that the Sham Defendants “do not need
10 to make the units rent ready.”

11 344. Buyer accepted the terms other than the closing date and a portion of the cost
12 shifting, and on January 18, 2017 an initial PSA was forwarded, and at the time Seller’s broker,
13 Art Carll represented that “seller is not overly sophisticated” and will “blow up” the deal if there
14 are a “bunch of changes.”

15 345. After exchanging drafts and minor changes by both parties, on February 8, 2017,
16 the Sham Defendants and Westland both signed the 2017 PSA, with the following key terms:

- 17 a. Liberty Village’s purchase price would be \$44,500,000;
- 18 b. Village Square’s purchase price would be \$16,000,000;
- 19 c. Counterclaimants would forward a \$667,500 initial deposit for Liberty Village
20 and \$240,000 initial deposit for Village Square;
- 21 d. Sham VI & Sham VII would deliver or make available due diligence items within
22 five (5) business days by February 15, 2017;
- 23 e. Counterclaimants would approve or disapprove title, inspection and due diligence
24 contingencies by March 10, 2017, and a \$907,500 additional deposit would be
25 made that day;
- 26 f. The due diligence deadline would be March 10, 2017; and
- 27 g. The closing date would occur on April 27, 2017.

1 346. On February 12, 2017, Weinstein wrote an email stating the tenant lease files
2 were available onsite, inquiring whether the tenant ledgers should be pulled, and requesting
3 confirmation that the brokers could access the online portion of the due diligence folders.

4 347. On February 16, 2017, Counterclaimants forwarded a schedule for site inspections
5 planned for February 22 & 23, 2017, both for Counterclaimants and an outside vendor, Partner
6 Engineering and Science, Inc. (“Partner”).

7 348. On February 28, 2017, Davidson sent an email stating: “The questionnaires for
8 the PRCs are already in the dropbox for both properties,” Davidson requested that the broker
9 address any further questions, and later that same day broker Art Carll confirmed that Westland
10 had the questionnaires but was requesting a copy of the delinquency report for Village Square.

11 349. The next day, on March 1, 2017, the deal began to break apart when Weinstein
12 forwarded a copy of the delinquency report to broker Art Carll and Davidson, with the intent that
13 the information be forwarded to Westland.

14 350. On March 6, 2017, Counterclaimants received inspection findings from Partner
15 Engineering and Science, Inc., which raised several concerns with the condition of the
16 Properties, including pest control issues, roof leaks and need for replacement, water leaks, water
17 damage to floors and ceilings, potential microbial growth, the need for asphalt pavement
18 replacement, and damaged carports.

19 351. As such, on March 8, 2017, prior to the close of due diligence, Yanki Greenspan,
20 on behalf of Westland, emailed Art Carll stating: “Thank you for working diligently with us
21 through this long process. As you are aware the physical condition of this property is
22 unacceptable to us. The issues that are holding us back are criminal activity, mold in more than
23 15% of the units, buildings sinking, insanely poor collections, etc. We are anticipating a 2+ year
24 clean up period and expenditures exceeding \$6mil. If I had to throw out a number we could pay
25 for this property it would be closer to \$45mil. If you think that the seller is at all interested in
26 selling the building at that price please let me know. Otherwise we will be canceling escrow by
27 tomorrow.”

1 352. On March 10, 2017, Westland’s in-house counsel, Michael Libraty advised the
2 Sham Defendants that Westland was providing a written disapproval of contingencies for both
3 Properties.

4 353. Counterclaimants’ email from Yanki Greenspan and written disapproval of
5 contingencies provided the Sham Defendants a roadmap for the attributes at the Properties that
6 Counterclaimants found material, and how the Sham Defendants could document that the
7 condition of the Properties had improved.

8 **d. Manufacturing the “Rent” and “Occupancy” Numbers Before and After**
9 **the Failed 2017 Transaction**

10 354. Upon information and belief, there was no source of information regarding the
11 Properties’ financial performance other than directly from the Sham Defendants at the time of
12 the 2018 purchase and sale transaction.

13 355. Upon information and belief, until July 2015 the Properties were managed by
14 outside property management, but thereafter the Sham Defendants controlled the Properties
15 financial records and maintained such books, financial records and rent rolls with limited
16 assistance from Westcorp.

17 356. Upon information and belief, leading up to and at the time it was trying to sell the
18 Properties to Westland, SHAM VI and SHAM VII were processing an extraordinarily high
19 number of five (5) day notices to pay rent or quit each month, which amounted to “hundreds” of
20 notices, but the SHAM Defendants were not actually evicting the occupants in the units.

21 357. Upon information and belief, even after an apartment was vacant the SHAM
22 Defendants would not permit its accounting employees/contractors to simply process tenant
23 move-outs in the Yardi computerized database property management and accounting records for
24 SHAM VI and SHAM VII as those vacancies occurred.

25 358. Instead of accurately reflecting the true occupancy status of the apartments, upon
26 information and belief, Weinstein and Wilde would decide on the number of tenants that they
27 would permit to be “processed” each month, in order to control the number of tenants that were
28

1 shown as having moved out each month in the computerized database the Sham Defendants
2 maintained.

3 359. Upon information and belief, Weinstein and Wilde would only typically permit 5
4 or 6 tenants to be shown as having moved out each month in the computerized database.

5 360. Upon information and belief, a primary factor in deciding how many past tenants
6 that Weinstein & Wilde would permit to be shown as having moved out of the Properties was
7 based on the amount of “rent” they wanted to show as having been paid each month at the
8 Properties.

9 361. Upon information and belief, after determining that amount of “rent” they wished
10 to show for that month, Weinstein and Wilde would work backwards to determine the number of
11 tenants who needed to occupy the Properties to create rent account receivables that would
12 support those calculations, and would only process “move outs” for a corresponding number of
13 apartments and delay processing the remaining “move-outs.”

14 362. The process resulted in Weinstein and Wilde listing rental income that they knew
15 would never be collected in order to create the appearance that the Properties were generating an
16 elevated level of income in both the electronic tenant records and the financial records generated
17 with those records by Sham VI and Sham VII.

18 363. However, upon information and belief, the Sham Defendants knew the true rent
19 roll information, because they maintained a separate set of hard copy books and records within
20 vacant unit(s), which initially was a vacant two bedroom unit near the Village Square rental
21 office and that was later moved to a unit at Liberty Village.

22 364. Upon information and belief, each tenant had a hardcopy file in the vacant unit(s)
23 that was contained in a large envelope, and the large envelopes were in turn stored in bankers’
24 boxes in the vacant unit(s).

25 365. Upon information and belief, Weinstein and Wilde knowingly and intentionally
26 failed to accurately document the true number of vacant units at the Properties in order to “keep
27 the numbers up” in electronic records produced to outside parties, but the files stored in the
28

1 bankers boxes in the vacant unit(s) contained annotations identifying the true occupancy status
2 and/or rental payment history of each tenant.

3 366. Upon information and belief, the Sham Defendants required daily “rent roll
4 correction” and delinquency reports to be submitted electronically via email and/or Dropbox to
5 accounting personnel at the Shamrock Communities LLC corporate office, which records were
6 reviewed by Weinstein, Davidson, Wilde and accounting personnel at the corporate office in
7 Connecticut.

8 367. Upon information and belief, Weinstein had a primary, active role in establishing
9 the improper, inaccurate accounting practices, but Weinstein shared those duties with Davidson.

10 368. Upon information and belief, both Weinstein and Davidson operated remotely,
11 but Davidson provided daily directives regarding the handling of the improper accounting.

12 369. Upon information and belief, Weinstein would periodically travel to the
13 Properties to review the onsite hardcopy records contained in the bankers’ boxes in the vacant
14 unit, and access to the unit was limited to Weinstein and a small number of individuals assisting
15 her.

16 370. Upon information and belief, Wilde ensured the improper accounting practices
17 were being followed onsite, and trained the accounting, collections and/or leasing staff to follow
18 the procedures that were established by Weinstein and Davidson related to documenting the
19 improper accounting information.

20 371. A former employee/contractor estimated that over 70% of the tenant ledgers
21 contained significant incorrect and inaccurate rent balance information and/or tenancy status.

22 372. When that employee/contractor first started working onsite, the individual
23 estimated that it took approximately a month, on a fulltime basis, just to compare the rent roll
24 and find out the units that were actually vacant due to the extremely inaccurate recordkeeping,
25 and that the inaccuracies involved between 200-300 apartments.

26 373. Further, when the employee/contractor asked why the Sham Defendants were not
27 processing “move-outs,” the individual was not given any substantive reason, but instead was

28

1 initially told that the employee/contractor should not be concerned and just could not process the
2 “move-outs just yet.”

3 374. Later, when the Sham Defendants had listed the Properties for sale in 2017 and
4 preparing for another sale in 2018, the Sham Defendants told the employee/contractor that they
5 were “trying to sell” the Properties and the move-outs could not be processed while the sale was
6 pending.

7 375. Upon information and belief, over the next several months during 2017 and early
8 2018, the Sham Defendants used the information Counterclaimants provided at the time of the
9 termination of the 2017 purchase transaction in order to improperly adjust Sham VI’s and Sham
10 VII’s financial records, so that those records would appear to conform to Counterclaimants’
11 standards, even though the actual rent collection and vacancies at the Properties did not support
12 that information.

13 **c. The Consummated Purchase Transaction**

14 376. During early 2018, the Sham Defendants relisted the Properties for sale.

15 377. Counterclaimants became aware of the new listing and began to investigate
16 whether the condition of the Properties had improved.

17 378. The Sham Defendants made representations, including within financial records,
18 which appeared to show that the Properties rental receivables and delinquency rates had
19 improved.

20 379. Specifically, on April 11, 2018, the Sham Defendants provided, *inter alia*, the
21 following through their broker, with the intent that it be provided to Counterclaimants:

22 a. An Aging Summary Report for each Property, as of March 31, 2018, which
23 metadata shows was authored by Davidson, and last saved by Weinstein, both on
24 April 3, 2018, which show a “Total Unpaid Charges” balance of \$8,714.15 for the
25 Village Square Property, and \$61,957.20 for the Liberty Village Property;

26 b. A Delinquency Report for each Property, as of April 12, 2018, which metadata
27 shows was authored by Weinstein on April 12, 2018, and last saved by Weinstein,

- 1 on April 13, 2018, which show a “Total Owed” balance of \$26,571.08 for Liberty
2 Village and a “Total Owed” balance of \$10,744.68 for Village Square.
- 3 c. Twelve Month Income Statements for each Property, for both 2016 and 2017,
4 which metadata shows was authored by Weinstein, and last saved by Weinstein
5 on February 11, 2018;
- 6 d. A 12 Month Occupancy Report for Village Square, showing the first three months
7 of information for 2018, and listed occupancy rates of 85.75% for January 2018,
8 87.63% for February 2018, and 88.78% for March 2018, which metadata does not
9 show an author, but was last saved by Weinstein on April 11, 2018.
- 10 380. Each of the documents purported to show improvement in the financial condition
11 of the Properties between March 2017, when the initial 2017 agreement was cancelled, and April
12 2018, when this financial information was provided.
- 13 381. Each of the documents referenced in the foregoing paragraph either contained
14 false information or concealed material facts, which overstated income, minimized delinquency
15 balances or failed to convey the true occupancy rates at the Properties.
- 16 382. Based on the continuing interest of both parties in relation to completing a sale of
17 the Properties in light of the improvements at the Properties that the Sham Defendants
18 represented they made, on April 25, 2018, the Sham Defendants’ counsel provided a draft
19 purchase and sale agreement with factual revisions that modified the terms of the parties last
20 proposed agreement that was terminated in March 2017. Those factual modifications included:
- 21 a. The disclosure of fire renovation work for the April 2018 fire;
22 b. The disclosure of a new loan that was entered into with Lenders in November
23 2017, and a requirement that Counterclaimants assume that loan;
24 c. The disclosure of the Las Vegas Metropolitan Police Department’s Notice and
25 Declaration of Chronic Nuisance, and recognition that Counterclaimants were not
26 permitted to independently seek information or to address the outstanding
27 nuisance notice prior to the closing date;
28 d. A demand for increased initial and additional deposits;

- 1 e. A limitation on inspections of the real property to being, a one day inspection by
2 two to four individuals “who are its own personnel” and a limitation that
3 Counterclaimants’ lease review would be conducted onsite, only on that same
4 day;
5 f. Terms related to Required Repairs, including that the Sham Defendants would
6 “use diligent efforts to complete” the required repairs prior to closing, or give a
7 credit for all remaining Required Repairs.
8 g. Disclosure “that the pool near the gym of the Property has a material crack and
9 that the pool likely needs to be replaced.”

10 383. On June 22, 2018, Amusement entered into two purchase and sale agreements,
11 one with Sham VI for the purchase of the real property located at 4870 Nellis Oasis Lane, Las
12 Vegas, NV 89115 for \$44,300,000, and the second with Sham VII for the purchase of the real
13 property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115 for \$16,000,000 (singularly
14 the “Purchase Agreement” or together “Purchase Agreements”).

15 384. Section 3.7.1 of the Purchase Agreements provided that “All representations and
16 warranties of Buyer or Seller, as appropriate, contained in this Agreement shall be true and
17 correct as of the date made and as of the Close of Escrow with the same effect as though such
18 representations and warranties were made at and as of the Close of Escrow.”

19 385. In those agreements, the Sham Defendants mandated extremely strict terms and a
20 tight timeframe for due diligence, as well as a quick closing date approximately 60 days after the
21 purchase and sale agreement.

22 386. Section 3.3.1 of the Purchase Agreement was drafted to require all due diligence
23 to go through the Sham Defendant’s broker or Weinstein, as the agreement stated that “In no
24 event shall Buyer contact any employees of Seller or its property manager at the Property
25 without the consent of Seller.”

26 387. One term of the Purchase Agreements was the Sham Defendants’ mandated that
27 Counterclaimants were required to assume the Sham Defendants’ current loans so that the Sham
28 Defendants would not be required to pay an early termination fee.

1 388. During due diligence on June 26, 2018, the Sham Defendants produced, *inter alia*,
2 the following through their broker Jannie Mongkolsakulkit, with the intent that it be provided to
3 Counterclaimants:

4 a. Income Statements for Liberty Village, for the years ending December 31, 2016
5 and December 31, 2017, and the period of July 1, 2017 to June 30, 2018, all of
6 which metadata shows were authored and last saved by Weinstein;

7 b. Income Statements for Village Square, for the years ending December 31, 2016
8 and December 31, 2017, and the period of July 1, 2017 to June 30, 2018, all of
9 which metadata shows were authored and last saved by Weinstein;

10 c. Rent Roll with Lease Charges for Liberty Village, showing an occupancy rate of
11 85.13% and vacancy rate of 11.94%, as of June 26, 2018, which metadata shows
12 was authored by Davidson, and last saved by Davidson on June 26, 2018;

13 d. Rent Roll with Lease Charges for Village Square, showing an occupancy rate of
14 83.86% and vacancy rate of 14.91%, as of June 26, 2018, which metadata shows
15 was authored by Davidson, and last saved by Davidson on June 26, 2018;

16 e. Delinquency Report for Liberty Village, showing -\$26,718.13 under the “Total
17 Owed” column for the “Grand Total” of all delinquencies as of June 26, 2018, for
18 which metadata listing the author and last individual saving the file appeared to be
19 removed, but which contained a footer stating “UserId: ellenw Date : 6/26/2018
20 Time : 9:44 PM”; and

21 f. Delinquency Report for Village Square, showing -\$45,240.59 under the “Total
22 Owed” column for the “Grand Total” of all delinquencies as of June 26, 2018 for
23 which metadata listing the author and last individual saving the file appeared to be
24 removed, but which contained a footer stating ““UserId: ellenw Date : 6/26/2018
25 Time : 9:46 PM”.

26 389. Each of the documents referenced in the foregoing paragraph either contained
27 false information or concealed material facts, which overstated income, minimized delinquency
28 balances or failed to convey the true occupancy rates at the Properties.

1 390. During due diligence on July 4, 2018, the Sham Defendants produced, *inter alia*,
2 the following via an email from Ellen Weinstein to brokers Spence Ballif and Jannie
3 Mongkolsakulkit, with the intent that it be provided to Counterclaimants, and on July 5, 2018,
4 the documents were both emailed to Counterclaimants directly by Mongkolsakulkit and passed
5 through Bailiff to Counterclaimants' own broker Devin Lee:

6 a. Rent Roll with Lease Charges for Village Square, showing an occupancy rate of
7 85.57% and vacancy rate of 13.20%, as of June 30, 2018, which metadata shows
8 was authored and last saved by Weinstein on July 4, 2018;

9 b. Rent Roll with Lease Charges for Liberty Village, showing an occupancy rate of
10 86.52% and vacancy rate of 11.25%, as of June 30, 2018, which metadata shows
11 was authored and last saved by Weinstein on July 4, 2018;

12 c. Village Square TTM, as of June 2018, which metadata shows was authored and
13 last saved by Weinstein on July 4, 2018; and

14 d. Liberty Village TTM, as of June 2018, which metadata shows was authored and
15 last saved by Weinstein on July 4, 2018;

16 391. Each of the documents referenced in the foregoing paragraph either contained
17 false information or concealed material facts, which overstated income, minimized delinquency
18 balances or failed to convey the true occupancy rates at the Properties.

19 392. Based on the foregoing materials provided during due diligence, the total
20 delinquencies the Sham Defendants listed in the delinquency reports provided to
21 Counterclaimants was only \$36,615.53.

22 393. On July 13, 2018, a First Amendment to the Purchase Agreement for 4870 Nellis
23 Oasis Lane, Las Vegas, NV 89115 was executed to remove all conditions other than the lender
24 approval contingency.

25 394. On August 23, 2018, the Purchase Agreement for 4870 Nellis Oasis Lane, Las
26 Vegas, NV 89115, was assigned by Amusement to Liberty LLC, and the Purchase Agreement
27 for 5025 Nellis Oasis Lane, Las Vegas, NV 89115, was assigned by Amusement to Village LLC.

28 d. **The Shredding Coverup and Key Charade**

1 395. On August 28, 2018, in the late afternoon, Counterclaimants received a telephone
2 call from an outside vendor who had visited the Property’s onsite property management offices
3 that day, and who reported that the onsite staff was “busy shredding a bunch of stuff in the
4 office.”

5 396. Counterclaimants’ residential asset manager, Ruth Garcia, immediately contacted
6 Weinstein on August 28, 2018, at 4:57 PM, told her that Counterclaimants had received a phone
7 call regarding the shredding and asked her “Do you know what that is about?”

8 397. Weinstein responded minutes later at 5:11 PM, “I don’t. We didn’t give them that
9 directive. Which office is it, liberty or village?”

10 398. On August 29, 2018, at 1:15 PM, the date of closing, Westland’s counsel
11 contacted Weinstein by email, stating that “There was virtually no one at the management office
12 when Westland’s management team arrived to handle the transition. I’m told that the office was
13 locked and completely empty save for a pile of unlabeled keys. That’s it. Westland was also told
14 that Shamrock’s management company spent the day yesterday shredding documents and files. I
15 don’t know at this point what the status of the files is and what impact all of this shredding
16 activity will have on Westland’s management of these properties on a go forward basis. I’m hard
17 pressed to understand why this happened. . . . As I mentioned above, there’s a pile of unlabeled
18 keys and Westland’s team has absolutely no clue which key goes to which door.”

19 399. On August 29, 2018, at 1:51 PM, Weinstein responded: “To the best of my
20 knowledge most of our staff stayed with Westland and we were directed to come to work today
21 at the normal times. . . . The prior property manager had left: a) all of the keys on her desk in
22 marked envelopes and, b) in the safe checks being held for Westland’s arrival. The combination
23 to the safe was given to Westland upon confirmation that funds had been received. I have no
24 knowledge of shredding that would impact operations.” Weinstein then noted that the prior
25 onsite manager would return to the office “to go through the items left for Westland’s takeover.”

26 400. When Counterclaimants took over the management of the Properties on August
27 29, 2018, none of the information discussed above, including various reports, such as the rent
28

1 roll correction reports, full delinquency reports, and aged receivable reports, which had been
2 prepared onsite were present in the records at the onsite offices.

3 401. Upon information and belief, the Sham Defendants knew that rent roll correction
4 reports, full delinquency reports, and aged receivable reports, would disclose the information on
5 the true occupancy rates at the Properties that they had concealed from Counterclaimants.

6 402. Upon information and belief, the Sham Defendants shredded the rent roll
7 correction reports, full delinquency reports, and other information capable of showing the true
8 occupancy rates at the Properties with the intent to conceal their misrepresentations regarding the
9 true occupancy rates.

10 403. Upon information and belief, the Sham Defendants knew that to recreate that
11 information, Westland would need to need to physically visit each unit to determine whether the
12 unit was in fact occupied, and that providing a stack of over 1100 unlabeled, unsorted keys,
13 especially when Westland would need to provide a twenty-four our notice for access to each unit
14 prior to conducting a physical check, would substantially impair Westland's ability to determine
15 the true occupancy rates at the properties.

16 404. Upon information and belief, the Sham Defendants provided a stack of 1100
17 unlabeled, unsorted keys in order to impair Westland's ability to physically examine the units.

18 405. Westland relied on financial information that the Sham Defendants had provided
19 at the time of the failed 2017 transaction, the information disclosed by brokers in offering the
20 Properties for sale, the information provided during due diligence, and the other communications
21 that the Sham Defendants made through the date of the August 2018 closing, which contained
22 false and inaccurate information.

23 **e. The Sham Defendants' Failure to Repair**

24 406. The Purchase Agreements provided that the properties would be generally be
25 transferred in "as is" condition, but there were several exceptions, including the fire insurance
26 repairs, the Nuisance Notice Work repairs, and making "vacated residential unit(s) rent ready at
27 or prior to Close of Escrow."

1 407. Specifically, two of the buildings onsite had been damaged by fire, and based on
2 amendments to the Loan Agreements, the Sham Defendants were required to repair and restore
3 those properties within one year of each fire.

4 408. The first fire occurred on April 15, 2018.

5 409. The second fire occurred on May 9, 2018.

6 410. The Purchase Agreement for the Liberty Property provided that repairs of the two
7 buildings would be commenced but not completed by the closing date.

8 411. Despite the passage of four and a half months for one of the buildings, and the
9 passage of four months for the second building, nearly no action had been taken to commence
10 restoring those structures. Instead, the damaged structures had only been boarded up and
11 demolition was performed on one of the buildings.

12 412. Likewise, Section 3.6.1 the Purchase Agreements stated “from the Effective Date
13 through the Close of Escrow, Seller shall maintain the Property in its present condition, subject
14 to normal wear and tear (from the last required repair) . . . provided that, to the extent a
15 residential unit is vacated after the Effective Date and prior to the date that is five (5) business
16 days prior to the Close of Escrow, Seller shall make such vacated residential unit(s) rent ready at
17 or prior to Close of Escrow . . .”

18 413. However, in practice, the Sham Defendants made representations to tenants that
19 repairs would be made, but the Sham Defendants simply failed to maintain currently occupied
20 units in need of any substantial repair, and improperly failed to evict or remove non-compliant
21 and non-rent paying tenants in order to avoid “turning” residential unit(s) by making them in rent
22 ready condition before the Close of Escrow.

23 414. Upon information and belief, the Sham Defendants made a conscious decision not
24 to fix items in disrepair in the apartments and the common areas at the Properties.

25 415. Many of the items in disrepair that the Sham Defendants failed to repair or
26 maintain, included items that the Sham Defendants were required to repair as a matter of law,
27 which resulted in tenant claims seeking rent reductions and damages for the failure to provide
28 habitable premises and essential services, including but not limited to failures to adequate fix or

1 maintain hot water heaters, refrigerators, pest control, roofs, flooring, ceilings, plumbing,
2 window glass, and water intrusion issues.

3 416. As a result of the Sham Defendants' failures in this regard, Counterclaimants
4 were required to either pay damages to such tenants, or to discount their rental balance during
5 future rental periods due to the repairs that the Sham Defendants failed to perform.

6 417. Additionally, the failure to properly manage the properties by neglecting to evict
7 non-compliant and non-rent paying tenants improperly shifted that burden to Counterclaimants,
8 resulted in Counterclaimants being required to cover the cost of repairs that the Purchase
9 Agreements required the Sham Defendants to perform, and were responsible, at least in part, for
10 Fannie Mae declaring a default in December 2019, which has resulted in substantial damage to
11 Counterclaimants.

12 **f. False and Misleading Information Discovered Post-Closing**

13 418. Counterclaimants utilize the same tenant property management and accounting
14 database that the Sham Defendants used to track rental balances, delinquencies, occupancy rates,
15 and past due receivables.

16 419. Based on Section 3.15 of the Purchase Agreements, the Sham Defendants were
17 required to "cutoff [their] books of Property tenant related transactions" two business days prior
18 to the closing date for the purchase of the Properties, and one day prior to closing provide
19 Counterclaimants digital copies of its full files and reports, including in the file format of the
20 property management software the Sham Defendants used to manage tenant records.

21 420. Section 3.15 specified that at least seventeen types of information were required
22 to be provided, which were:

- 23 a. Residential Unit Types;
- 24 b. Residential Unit Type Details;
- 25 c. Residential Tenants;
- 26 d. Residential Roommates;
- 27 e. Residential Lease Charges;
- 28 f. Residential Property Amenities;

- g. Residential Unit Amenities;
- h. Residential Rentable Item Types;
- i. Residential Rentable Items;
- j. a Rent Roll with Lease Charges report;
- k. a Security Deposit Activity report;
- l. a Financial Aged Receivables - Tenant by Charge Code report;
- m. a Resident Directory report;
- n. a Roommate Directory report;
- o. a Unit Directory report;
- p. a Rentable Items Directory report; and
- q. an Amenities Listing report.

421. The information provided by the Sham Defendants the day prior to closing was incomplete.

422. The Sham Defendants claimed the information provided was complete, and that if it were not, then they were unable to extract the information from their tenant record database.

423. As such, after closing, Counterclaimants were required to contract with a third party to obtain a complete copy of the Sham Defendants' records.

424. Shortly after the August 29, 2018 closing, through that vendor the Sham Defendants produced additional information to Counterclaimants, including additional financial information exported from the Sham Defendants' Yardi database for the Properties.

425. Based on the additional information provided shortly after closing for the purchase of the Properties, Counterclaimants' Chief Financial Officer began to discover many tenants with delinquent accounts and substantial unpaid rents.

426. Based on Counterclaimants' Chief Financial Officer's review, several of the records that were unavailable to Counterclaimants prior to the August 29, 2018 sale of the Properties provided evidence that the Sham Defendants had provided misleading or inaccurate information to Counterclaimants.

1 427. Based on the above, Counterclaimants contacted a forensic accountant and spoke
2 with internal accounting personnel and determined the following:

3 a. The additional information provided post-closing permitted an Aged Receivables
4 Analysis, which as of August 31, 2018 showed past due delinquencies of
5 \$1,669,403.30, which is an amount much greater than the \$36,615.53 shown in
6 the Delinquency Reports that the Sham Defendants provided prior to closing or
7 the Aging Summaries provided in April 2018, which showed a combined
8 \$70,671.35 of “Total Unpaid Charges”;

9 b. The Sham Defendants had run reports to only provide information on “current”
10 tenants and omitted information on tenants that it placed in a “noncurrent” status;

11 c. The Sham Defendants did not provide Balance Sheet information to
12 Counterclaimants, which would have disclosed the elevated accounts receivable;

13 d. The Sham Defendants failed to provide information to Counterclaimants
14 overstated income by failing to provide information related to bad debts, and
15 failing to show and/or utilize an allowance for bad debts or a charge to income for
16 the bad debts consistent with generally accepted accounting principles.

17 428. The Sham Defendants intentionally ran reports and only provided information on
18 “current” tenants in an attempt to mislead Counterclaimants.

19 429. Upon information and belief, the Sham Defendants intentionally failed to produce
20 full financial information both prior to closing the transaction and thereafter in order to hide their
21 misrepresentations.

22 430. The financial information that the Sham Defendants provided was false and/or
23 concealed material information on the true state of delinquencies and total unpaid charges at the
24 Properties.

25 431. The Aging Summaries, Income Statements, Rent Rolls, Delinquency Reports, and
26 Occupancy Reports, provided prior to closing were relied upon by Counterclaimants and
27 materially overstated income and failed to reveal the true financial condition of the Properties.

28 **IV.V. COUNTERCLAIMS**

1 **a. FIRST CAUSE OF ACTION (BREACH OF CONTRACT – LIBERTY**
2 **LOAN—BY WESTLAND LIBERTY VILLAGE, LLC)**

3 203.395. Counterclaimants repeat, reallege, and incorporate the allegations set forth
4 in the preceding paragraphs as if fully set forth herein.

5 204.396. A valid assumption agreement was entered into between Liberty LLC, on
6 the one hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018,
7 specifically the Assumption and Release Agreement.

8 205.397. The assumption agreement utilized the general provisions of the
9 Multifamily Loan and Security Agreement entered into between Liberty LLC's predecessor on
10 the one hand, and Fannie Mae and Grandbridge on the other hand, to specify the terms that
11 would govern the parties' practices for administration of the loan.

12 206.398. Upon information and belief, Grandbridge assigned its interests in a
13 portion of the Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender
14 and Servicer on either the Loan agreement or a portion of the agreements that were signed by
15 Liberty LLC's predecessor, which obligations were assumed by Liberty LLC.

16 207.399. Separately, Grandbridge signed the closing statement, which conveyed its
17 1% loan assumption fee as "Lender."

18 208.400. Grandbridge signed the Liberty Loan agreements, and the assumption
19 agreement with Westland, both on its own behalf and on behalf of Fannie Mae.

20 209.401. Unless legally excused from doing so by the Lenders' illegal actions,
21 ~~Libert~~Liberty LLC has performed all of the duties and obligations required of it under the terms
22 of the Loan Agreement with Fannie Mae, including timely making monthly periodic loan
23 payments and paying the 1% loan assumption fee.

24 210.402. Unless legally excused from doing so by the Lenders' illegal actions,
25 Liberty LLC has performed all of the duties and obligations required of it under the terms of the
26 terms of the Loan Agreement with Grandbridge, including timely making monthly periodic loan
27 payment and paying the 1% loan assumption fee.

1 211.403. To the extent that any duties or obligations required of Westland have not
2 been performed, such duties or obligations have been excused because of Grandbridge's and
3 Fannie Mae's ~~breach-non-performance~~ of the Loan Agreements.

4 212.404. Fannie Mae and Grandbridge have materially breached their Loan
5 Agreements with Liberty LLC by failing to require adequate reserves at the time of the initial
6 loan, requesting and performing an improper property condition assessment, utilizing that
7 improper PCA to demand and adjustment to reserve deposits, failing to disburse funds in
8 response to reserve disbursement requests, sending/filing improper notices, improperly listing
9 Liberty and the affiliated Westland entities on a-check, discriminating against Liberty LLC and
10 the affiliated Westland entities on borrow ups, new loans and refinance loans, and generally
11 violating the terms of the Multifamily Loan and Security Agreement to the point that the
12 administration has become so one-sided that Liberty LLC had no option but to commence these
13 proceedings.

14 213.405. That as a direct and proximate result of Fannie Mae's breach of contract,
15 Liberty LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which
16 will be determined at trial.

17 214.406. That it has been necessary for Liberty LLC to retain counsel to prosecute
18 this action by reason of which it is entitled to reasonable attorney's fees.

19 **b. SECOND CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE**
20 **LOAN—BY WESTLAND VILLAGE SQUARE, LLC)**

21 215.407. Counterclaimants repeat, reallege, and incorporate the allegations set forth
22 in the preceding paragraphs as if fully set forth herein.

23 216.408. A valid assumption agreement was entered into between Square LLC, on
24 the one hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018,
25 specifically the Assumption and Release Agreement.

26 217.409. The assumption agreement utilized the general provisions of the
27 Multifamily Loan and Security Agreement entered into between Square LLC's predecessor on
28

1 the one hand, and Fannie Mae and Grandbridge on the other hand, to specify the terms that
2 would govern the parties' practices for administration of the loan.

3 218.410. Upon information and belief, Grandbridge assigned its interests in a
4 portion of the Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender
5 and Servicer on either the loan agreement or a portion of the agreements that were signed by
6 Square LLC's predecessor, which obligations were assumed by Square LLC.

7 219.411. Separately, Grandbridge signed the closing statement, which conveyed its
8 1% loan assumption fee as "Lender."

9 220.412. Grandbridge signed the Square Loan agreements, and the assumption
10 agreement with Westland, both on its own behalf and on behalf of Fannie Mae.

11 221.413. Square LLC has performed all of the duties and obligations required of it
12 under the terms of the Loan Agreement with Fannie Mae, including timely making monthly
13 periodic loan payment and paying the 1% loan assumption fee.

14 222.414. Square LLC has performed all of the duties and obligations required of it
15 under the terms of the terms of the Loan Agreement with Grandbridge, including timely making
16 monthly periodic loan payment and paying the 1% loan assumption fee.

17 223.415. To the extent that any duties or obligations required of Westland have not
18 been performed, such duties or obligations have been excused because of Grandbridge's and
19 Fannie Mae's non-performance of the Agreement.

20 224.416. Fannie Mae has materially breached its agreement with Square LLC by
21 failing to require adequate reserves at the time of the initial loan, requesting and performing an
22 improper property condition assessment, utilizing that improper PCA to demand an adjustment
23 to reserve deposits, failing to disburse funds in response to reserve disbursement requests,
24 sending/filing improper notices, improperly listing Square and the affiliated Westland entities on
25 a-check, discriminating against Square LLC and the affiliated Westland entities on borrow ups,
26 new loans and refinance loans, and generally violating the terms of the Multifamily Loan and
27 Security Agreement to the point that the administration has become so one-sided that Square
28 LLC had no option but to commence these proceedings.

1 225.417. That as a direct and proximate result of Fannie Mae's breach of contract,
2 Square LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which
3 will be determined at trial.

4 226.418. That it has been necessary for Liberty Square LLC to retain counsel to
5 prosecute this action by reason of which it is entitled to reasonable attorney's fees.

6 **c. THIRD CAUSE OF ACTION (BREACH OF CONTRACT – MCFA—BY**
7 **WESTLAND CREDIT FACILITY ENTITIES)**

8 419. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
9 preceding paragraphs as if fully set forth herein.

10 420. A valid agreement was entered into between the Westland Credit Facility Entities,
11 on the one hand, and Fannie Mae, on the other hand, on March 15, 2019, specifically the MCFA.

12 421. The MCFA specified the terms that would govern the parties' practices for
13 administration of the loan.

14 422. Upon information and belief, Wells assigned its interests in the MCFA to Fannie
15 Mae, but continued as Servicer on the agreement related to the processing of Future Advances
16 and the servicing of the credit facility agreement.

17 423. Upon information and belief, after assigning the MCFA to Fannie Mae, Wells had
18 no further discretion under the MCFA agreement.

19 424. The Westland Credit Facility Entities have performed all of the duties and
20 obligations required of them under the terms of the MCFA with Fannie Mae, including timely
21 making monthly periodic loan payment and paying all required loan fees.

22 425. To the extent that any duties or obligations required of the Westland Credit
23 Facility Entities have not been performed, such duties or obligations have been excused because
24 of Fannie Mae's non-performance of the MCFA.

25 426. Fannie Mae has materially breached its agreement with the Westland Credit
26 Facility Entities by improperly placing the Westland Credit Facility Entities on "a-check,"
27 discriminating against the Westland Credit Facility Entities, failing to permit Borrow Up
28

Advances despite all conditions for such advances having been made, failing to allow the submission of any other Future Advance request, and generally violating the terms of the MCFA.

427. That as a direct and proximate result of Fannie Mae's breach of contract, the Westland Credit Facility Entities have been damaged in an amount in excess of \$15,000.00, the exact amount of which will be determined at trial.

428. That it has been necessary for the Westland Credit Facility Entities to retain counsel to prosecute this action by reason of which it is entitled to reasonable attorney's fees.

e.d. FOURTH CAUSE OF ACTION (BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)

227.429. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs as if fully set forth herein.

228.430. A valid and binding agreement was formed between Westland and Fannie Mae/Grandbridge on each of the two separate sets of loan agreements, related to the Properties.

431. Westland's agreements for the two properties utilized the general provisions of the underlying loan agreement entered into between Westland's predecessor and Fannie Mae/Grandbridge to specify the terms that would govern the parties' practices for administration of the loan.

229.432. In addition, the Westland Credit Facility Entities entered into the MCFA with Fannie Mae to specify the terms that would govern the parties' practices for administration of the loan and credit line established by the MCFA.

230.433. In every contract, including the loans between Westland and Fannie Mae/Grandbridge, there exists in law an implied covenant of good faith and fair dealing.

434. Both prior to the loan assumption and after, Westland acted in good faith by paying Fannie Mae/Grandbridge a 1% loan assumption fee under each agreement related to the Properties, providing Fannie Mae/Grandbridge access to both the Liberty Property and the Square Property, paying for substantial improvements at each of the Properties, improving the condition of each of the Properties and their tenant base, providing confidential business documents to Fannie Mae/Grandbridge, and continuously paying Westland's full loan payments

1 on a timely basis even after Fannie Mae/Grandbridge without prior notice suspended the
2 automatic ACH payments the parties had used as the agreed upon method of payment by
3 Westland for the Loan.

4 435. Prior to and after the closing for the MCFA, the Westland Credit Facility Entities
5 acted in good faith by submitting an application; being vetted according to Fannie Mae's
6 underwriting criteria; paying Fannie Mae/Wells all required legal fees for underwriting, all costs
7 for appraisals, and all additional loan issuance costs; and providing supporting documentation
8 related to the Westland Credit Facility Entities financial statements, and the financials of their
9 affiliated owners, shareholders, and/or parent companies, who were required to act as guarantors
10 and share their financial information.

11 231.436. Fannie Mae and Grandbridge wrongfully and deliberately took advantage
12 of Westland's good faith actions, by, *inter alia*, failing to perform all conditions, covenants and
13 promises required by them in accordance with the loans, including without limitation, altering
14 the standard that they would apply to a property condition assessment undertaken in July 2019
15 from the standard used at the time the loan was assumed, telling Westland that they would cover
16 the cost of the July 2019 property condition assessments but then refusing to discuss the
17 purported default unless Westland paid those costs, making a demand that Westland deposit an
18 additional \$2,~~706,150~~845,980.00 into escrow despite that the condition of its Properties had
19 improved not deteriorated since the assumption agreement was signed, placing Westland and its
20 affiliated entities on a-check, discriminating against Liberty, Square and the Westland-affiliated
21 entities on borrow ups, new loans and refinance loans based on Lenders' own unilateral
22 modification of the Loan Agreement, and by each of these actions Fannie Mae thereby breached
23 the implied covenant of good faith and fair dealing inherent in the subject agreement.

24 232.437. Grandbridge's actions were taken both on its own behalf as a Lender
25 and/or Servicer, and/or on behalf of Fannie Mae as its agent.

26 438. Wherefore Grandbridge and Fannie Mae did not act in good faith, that is, did not
27 perform its contract with each Counterclaimant in the manner reasonably contemplated by the
28

1 parties, so that each Counterclaimant has a remedy that goes beyond that of breach of the express
2 terms of their contract.

3
4 233.439. Grandbridge's and Fannie Mae's actions, misrepresentations, deception,
5 concealment, and breach of the covenant of good faith and fair dealing were done intentionally
6 with malice for the specific purpose of causing injury to Liberty LLC, ~~and~~ Square LLC, the
7 Westland Securities Entities and the Westland Credit Facility Entities.

8 234.440. As a direct and proximate result of Fannie Mae's breach, each
9 Counterclaimant has suffered damages in excess of \$15,000.00, the exact amount of which will
10 be proven at trial.

11 235.441. As a further direct and proximate result of Fannie Mae's breach, each
12 Counterclaimant has had to hire counsel to prosecute this matter by reason of which it is entitled
13 to reasonable attorney's fees.

14 **d.e.FOURTH FIFTH CAUSE OF ACTION (DECLARATORY RELIEF)**

15 236.442. Counterclaimants repeat, reallege, and incorporate the allegations set forth
16 in the preceding paragraphs as if fully set forth herein.

17 237.443. A genuine justiciable controversy exists relevant to the rights and
18 obligations herein regarding Westland's obligations under each of the Loan Agreements, and
19 whether Fannie Mae and Grandbridge may demand that Westland deposit additional funds into
20 reserve accounts.

21 238.444. The interests of Counterclaimants, on the one hand, and Fannie Mae and
22 Grandbridge on the other are adverse.

23 239.445. Specifically, the present dispute that resulted in a Notice of Default and
24 Election to Sell being sent by Fannie Mae is a dispute over the parties' interpretation of Article
25 13.02 of the Loan Agreement related to adjustments to reserve funding and the related reserve
26 administration requirements, as well as Article 6.03 related to the conditions when property
27 condition assessments may be utilized.

28 240.446. Westland has a legally protectable interest in the two Properties.

1 ~~241.447.~~ These issues are ripe for judicial determination, because on or about
2 October 18, 2019, Grandbridge served a Notice of Demand, both as Servicer/Lender, and on
3 behalf of Fannie Mae.

4 ~~242.448.~~ These issues are ripe for judicial determination, because on or about July
5 15, 2020, Fannie Mae served Westland with a Notice of Default and Intent to Sell the Properties.

6 ~~243.449.~~ These issues are ripe for judicial determination, because on or about
7 August 12, 2020, Fannie Mae filed a complaint seeking the appointment of a receiver to ouster
8 Westland from its Properties.

9 ~~244.450.~~ Westland seeks an order from this Court declaring that Article 13.02 and
10 Article 6.03 are only implicated if the condition of the Properties has physically deteriorated, or
11 impaired the value of Fannie Mae's and Grandbridge's security, and that no additional reserve
12 deposit is needed.

13 ~~245.451.~~ Westland seeks an order from this Court declaring that Fannie Mae and/or
14 Grandbridge breached the terms of the two Loan Agreements by demanding a property condition
15 assessment, demanding the adjustment of reserve deposits without any proper basis, and filing a
16 NOD.

17 ~~246.452.~~ That it has been necessary for Westland to retain the services of legal
18 counsel for which Westland is entitled to recover such costs and expenses from Fannie Mae.

19 ~~**e.f. FIFTH-SIXTH CAUSE OF ACTION (FRAUD & CONCEALMENT-IN**~~
20 ~~**THE INDUCEMENT)**~~

21 ~~247.453.~~ Counterclaimants repeat, reallege, and incorporate the allegations set forth
22 in the preceding paragraphs as if fully set forth herein.

23 ~~248.454.~~ That Westland entered into its Loan Agreement relying on Fannie Mae
24 and Grandbridge continuing to utilize the same standard for evaluating the condition of the
25 Properties that had been used at the origination of the Loan Agreements during late 2017, and at
26 the time of the loan assumption during the summer of 2018.

27 ~~249.455.~~ When Grandbridge forwarded documents regarding the loan assumption
28 and loan agreements to Westland, it did so not only on its own behalf, but also on behalf of

1 Fannie Mae, who advised Grandbridge to forward those documents to Westland with the intent
2 that Westland would be provided the loan assumption, loan agreements, and reserve schedules,
3 and that Westland would rely on those documents.

4 250.456. By letter dated August 20, 2018, Grandbridge represented on behalf of
5 itself and Fannie Mae to Liberty LLC that, “after a thorough review and analysis of the Proposed
6 Borrower’s [Liberty LLC’s] financial and managerial capacity, the Assumption has been
7 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
8 established schedule identified on Exhibit B attached hereto; No Change to the Required Repair
9 Reserve of \$39,375.00 as identified in schedule on Exhibit C attached hereto . . .” (Exhibit J.)
10 Further, Exhibit C, Required Reserve Schedule, listed all items as completed, except for a
11 \$9,375.00 holdback for “Misc. Concrete and Fence Repairs. Sports Court Resurfacing” that was
12 shown as having already been fully funded. (Exhibit J, at 7.)

13 251.457. Further, by letter dated August 20, 2018, Grandbridge represented on
14 behalf of itself and Fannie Mae to Square LLC that, “after a thorough review and analysis of the
15 Proposed Borrower’s [Square LLC’s] financial and managerial capacity, the Assumption has
16 been approved on the following terms: . . . No change to the Replacement Reserve monthly
17 deposit or established schedule identified on Exhibit B attached hereto . . .” (Exhibit K.)
18 Further, Exhibit C, Required Repair Reserve Schedule, simply stated “N/A” indicating that no
19 repair reserve was required for that loan. (Exhibit K, at 7.)

20 252.458. Fannie Mae and Grandbridge knew that Westland relied upon the amounts
21 and types of conditions requiring reserve deposits when entering into the Loan Agreements.

22 253.459. To induce Westland to consent to the Loan Agreements, to collect the loan
23 assumption fee from Westland, for Grandbridge to improve its own liquidity position with
24 Fannie Mae, to improve the creditworthiness of Fannie Mae’s loan portfolio, to attempt to
25 improperly generate additional fees and costs, and to improperly profit off of holding Westland’s
26 funds in a non-interest bearing escrow account, That Fannie Mae and Grandbridge did not inform
27 Westland that they planned to seek additional reserves at the time the Loan Agreements were
28 assumed by Westland in order to induce Westland to consent to the Loan Agreements, to collect

1 ~~the loan assumption fee from Westland, for Grandbridge to improve its own liquidity position~~
2 ~~with Fannie Mae, to improve the creditworthiness of Fannie Mae's loan portfolio, to attempt to~~
3 ~~improperly generate additional fees and costs, and to improperly profit off of holding Westland's~~
4 ~~funds in a non-interest bearing escrow account.~~

5 254.460. That Fannie Mae does credit reviews and monitoring of Grandbridge's
6 lending practices, and upon information and belief, that Fannie Mae determined that Grandbridge
7 failed to follow Fannie Mae's credit and underwriting criteria for loans in underwriting the
8 November 2017 loan.

9 461. Upon information and belief, that Fannie Mae required that Grandbridge obtain
10 additional security due to its poor underwriting, and thus Grandbridge had no intent to service
11 the Loan Agreements consistent with the documentation that was provided at the time of the
12 August 2018 loan assumption.

13 462. Additionally, in July 2019, despite that the Loan Agreements permitted Fannie
14 Mae to charge for a Property Condition Assessment based on deterioration, a PCA of the
15 Properties was requested by Lenders, and Joseph Greenhaw represented on behalf of
16 Grandbridge and Fannie Mae that Westland would not be required to pay the cost of the PCA if
17 it provided access to the Properties, and that if any deficiencies were found that Grandbridge and
18 Fannie Mae would work with Westland by only requiring a small addition to the reserve
19 accounts consistent with deferred maintenance schedules.

20 463. Westland knew that there had not been any deterioration in the condition of the
21 Properties, and relied upon Mr. Greenhaw's statement when providing access to the Properties in
22 September 2019, which as represented would only require nominal action by Westland in order
23 to preserve its broader relationship with Fannie Mae.

24 255.—

25 464. That had Westland known that Fannie Mae and Grandbridge would require an
26 additional deposit of over \$2.~~7~~85 million of additional reserve funding based on a loan balance
27 of approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a
28

1 loan with a seven year term, Counterclaimants would not have entered into the assumption
2 agreement and would have obtained alternative financing.

3 465. That had Westland known that Fannie Mae and Grandbridge would require an
4 additional deposit of over \$2.85 million of additional reserve funding based on a loan balance of
5 approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a loan
6 with a seven year term, as well as later having Lenders seek repayment for the improper PCA
7 costs and related legal fees, Counterclaimants would not have permitted access to the Properties
8 for a PCA that was in excess of what was required by the Loan Agreements.

9 256.—

10 257.466. Westland reasonably relied upon the types of expenses contained in the
11 repair and replacement escrow accounts schedules, because Westland has entered into numerous
12 loan agreements previously, but on those loan agreements, the lender never requested any
13 significant adjusted reserve deposits.

14 467. Westland relied on Fannie Mae's material misstatements and omissions by paying
15 a 1% loan assumption fee, providing Fannie Mae access to the Property, paying for substantial
16 improvements at the Property, improving the condition of the Property and its tenant base,
17 providing Fannie Mae confidential business documents, and continuously paying loan payments.

18 468. However, Fannie Mae and Grandbridge knew that they were improperly seeking a
19 Property Condition Assessment report, because prior to conducting the property condition
20 assessment, during a phone call in July 2019, Grandbridge's Senior Vice President of Loan
21 Servicing and Asset Management Joe Greenhaw represented that Westland would not be
22 required to pay the cost of the assessment if Westland agreed to provide f3, Inc. PCA access to
23 the Properties.

24 258.—

25 259.469. As a result of Grandbridge's misrepresentations and concealments, on
26 behalf of itself and Fannie Mae, Westland was induced to enter into the assumption agreement
27 with Fannie Mae as lender and Grandbridge as servicer, and to permit Fannie Mae and
28

1 Grandbridge to access its Properties to conduct a PCA when in excess of what was required by
2 the Loan Agreements, which has damaged Westland.

3 260-470. As a direct and proximate result of Fannie Mae's misstatements and
4 omissions, Westland has suffered damages in excess of \$15,000.00, the exact amount of which
5 will be proven at trial, because, *inter alia*, this is the only default that Westland has ever suffered,
6 it will impair Westland's credit rating leading to long term higher borrowing costs, and it has
7 impaired Westland's ability to re-finance its Properties at a time when interest rates are at an all-
8 time low.

9 471. By reason of the foregoing, Fannie Mae acted with oppression, fraud and malice,
10 and therefore, Westland is entitled to exemplary and punitive damages.

11 **f.g. SEVENTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION**
12 **AND CONCEALMENT)**

13 261-472. Counterclaimants repeat, reallege, and incorporate the allegations set forth
14 in the preceding paragraphs as if fully set forth herein.

15 262-473. Grandbridge, on behalf of itself and Fannie Mae, and Fannie Mae supplied
16 information and made material misrepresentations to Westland, including without limitation, as
17 detailed above that adequate reserve amounts had already been submitted, consistent with the
18 schedules attached to the loan assumption letters and documentation.

19 263-474. By letter dated August 20, 2018, Grandbridge represented on behalf of
20 itself and Fannie Mae to Westland that, it conducted "a thorough review and analysis of the
21 Proposed Borrower's financial and managerial capacity" before approving the assumption.

22 264-475. Upon information and belief, Grandbridge, on behalf of itself and Fannie
23 Mae, negligently misrepresented that it conducted an adequate review when setting the reserve
24 amounts in August 2018, prior to Westland signing the loan assumption, because a short one (1)
25 year later, it requested an additional \$2.7-85 million be placed into escrow with no deterioration
26 of the Properties.

27 265-476. The information and representations made by Grandbridge, on behalf of
28 itself and Fannie Mae, and Fannie Mae was false, in that unbeknownst to Westland they knew

1 the loan did not have sufficient security, and that there was a substantial likelihood they would
2 attempt to seek additional reserves.

3 266-477. Grandbridge, on behalf of itself and Fannie Mae, and Fannie Mae supplied
4 the information and made the representations to induce Westland to rely upon it, to act or refrain
5 from acting in reliance upon it, and to have Westland enter into the assumption agreement.

6 267-478. Grandbridge and Fannie Mae owed Westland a duty not to make material
7 misrepresentations.

8 268-479. Westland justifiably relied upon the information Grandbridge and Fannie
9 Mae provided.

10 269-480. As a direct and proximate result of Grandbridge's, on behalf of itself and
11 Fannie Mae, and Fannie Mae's misstatements and omissions, Westland has suffered damages in
12 excess of \$15,000.00, the exact amount of which will be proven at trial, because, *inter alia*, this
13 is the only default that Westland has ever suffered and it will impair Westland's credit rating and
14 leading to long term higher borrowing costs, and it has impaired Westland's ability to re-finance
15 its Properties at a time when interest rates are at an all-time low.

16 g.h. **SEVENTH-EIGHTH CAUSE OF ACTION (CONVERSION)**

17 270-481. Counterclaimants repeat, reallege, and incorporate the allegations set forth
18 in the preceding paragraphs as if fully set forth herein.

19 271-482. Grandbridge processed all reserve reimbursement payment requests, both
20 on behalf of Fannie Mae, and for its own benefit.

21 272-483. Westland has submitted several prior reserve reimbursement requests that
22 have gone unanswered by Grandbridge, including before its November 2019 demand for
23 additional reserve funding.

24 273-484. Westland and its predecessor submitted funds related to two fire insurance
25 claims to Grandbridge, which earmarked funds were to be held in escrow until the two fire-
26 damaged building were rebuilt.

27 274-485. The fire-damaged buildings were completely rebuilt with Westland's
28 funds.

1 275.486. Westland has submitted reserve disbursement requests for the release of
2 those funds, and other reserve disbursement requests for work that was completed, each of which
3 was accompanied by invoices, proof of payment, and documentation showing approval of all
4 required permits, but Grandbridge has failed to respond to those requests.

5 487. Grandbridge has asserted that it transferred Westland's funds to Fannie Mae after
6 the December 2019 default was asserted.

7 276.488. As such, Fannie Mae has wrongfully exerted dominion over Westland's
8 personal property, including, without limitation, the funds that Grandbridge and/or Fannie Mae is
9 continued to hold in reserve accounts, and the funds that they were improperly holding in reserve
10 accounts, that were earmarked for reconstruction of two fire damaged buildings at the Liberty
11 Property from the date of the requests for disbursement until the fire damage funds were released
12 in May 2021, several months after the Court entered an order for those funds to be released in
13 November 2020, and Grandbridge Fannie Mae has thereby wrongly converted the funds to their
14 own use and benefit.

15 277.489. Fannie Mae's continued dominion over Westland's personal property was
16 unauthorized and inconsistent with Westland's property rights.

17 278.490. Fannie Mae's dominion over Westland's personal property deprived
18 Westland of all of their property rights relating thereto.

19 279.491. Fannie Mae's acts constitute conversion.

20 280.492. As a direct and proximate result of Fannie Mae's conversion, Westland
21 has suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

22 281.493. Further, due to the wanton, malicious, and intentional conduct of Fannie
23 Mae, Westland is entitled to an award of exemplary and punitive damages against Fannie Mae.

24 282.494. Fannie Mae knew that by refusing to return the converted proceeds after
25 just demand, Borrowers would have to hire counsel to have those funds returned. Thus, it was
26 foreseeable that Borrowers would incur attorney's fees as special damages. Borrowers have
27 incurred these fees and request same as part of their special damages for conversion.

28 **h.i. EIGHTH-NINTH CAUSE OF ACTION (INJUNCTIVE RELIEF)**

1 ~~283.495.~~ Counterclaimants repeat, reallege, and incorporate the allegations set forth
2 in the preceding paragraphs as if fully set forth herein.

3 ~~284.496.~~ On or about July 15, 2020, two NODs were filed against the Liberty
4 Property and the Square Property and served on Westland.

5 ~~285.497.~~ Upon information and belief, in Nevada, the typical period for a
6 foreclosure sale to occur after a borrower receives a NOD is 120 days.

7 ~~286.498.~~ As Westland has made all debt service payments, and complied with the
8 terms of the Loan Agreements, the Properties rightfully belong to Westland.

9 ~~287.499.~~ Fannie Mae and Grandbridge are attempting to utilize Nevada's non-
10 judicial foreclosure process to improperly seize and sell Westland's Liberty Property and Square
11 Property.

12 ~~288.500.~~ Real property is a unique asset, and on that basis, in the event that a
13 wrongful foreclosure sale occurs, Westland will suffer extreme hardship and actual and
14 impending irreparable loss and damage.

15 ~~289.501.~~ Westland has no adequate or speedy remedy at law to prevent the sale of
16 the Properties, and injunctive relief is therefore Westland's only means for securing relief.

17 ~~290.502.~~ Westland is likely to succeed in this lawsuit on the merits of its claims.

18 ~~291.503.~~ Based on the foregoing, Westland is entitled to temporary restraining
19 orders and preliminary and permanent injunctive relief to preserve the status quo, to mitigate its
20 damages, and to prevent further irreparable injury to Westland, including, without limitation by:
21 (a) enjoining Fannie Mae and/or Grandbridge from any further attempts to foreclose on the
22 Properties related to their baseless requests to adjust the reserve deposits, and (b) enjoining
23 Fannie Mae and/or Grandbridge from any further attempts to coerce Westland into providing
24 additional reserves or to pay for the expenses related to the default that Grandbridge
25 manufactured.

26 ~~292.504.~~ As a further direct and proximate result of Fannie Mae's and/or
27 Grandbridge's improper demands to adjust reserves, their filing of the NOD, and the filing of
28

1 their Complaint seeking appointment of a receiver, Westland has had to hire counsel to prosecute
2 this matter by reason of which it is entitled to reasonable attorney's fees.

3 ~~i.j.~~ ~~NINTH~~ ~~TENTH~~ CAUSE OF ACTION (EQUITABLE
4 RELIEF/RESCISSION/ REFORMATION)

5 ~~293.505.~~ Counterclaimants repeat, reallege, and incorporate the allegations set forth
6 in the preceding paragraphs as if fully set forth herein.

7 ~~294.506.~~ On or about August 29, 2018, Westland entered into two assumption
8 agreements for the loans applicable to the Liberty Property and the Square Property.

9 ~~295.507.~~ Prior to signing the assumption, Grandbridge individually, and on behalf
10 of Fannie Mae, forwarded Westland a loan assumption agreement letter, which contained the
11 terms under which it would permit Westland's assumption of the Liberty Loan and Square Loan.

12 ~~296.508.~~ By letter dated August 20, 2018, Grandbridge represented on behalf of
13 itself and Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed
14 Borrower's [Liberty LLC's] financial and managerial capacity, the Assumption has been
15 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
16 established schedule identified on Exhibit B attached hereto; No Change to the Required Repair
17 Reserve of \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.)
18 Further, Exhibit C, Required Reserve Schedule, listed all items as completed, except for a
19 \$9,375.00 holdback for "Misc. Concrete and Fence Repairs. Sports Court Resurfacing" that was
20 shown as having already been fully funded. (Exhibit J, at 7.)

21 ~~297.509.~~ By letter dated August 20, 2018, Grandbridge represented on behalf of
22 itself and Fannie Mae to Square LLC that, "after a thorough review and analysis of the Proposed
23 Borrower's [Square LLC's] financial and managerial capacity, the Assumption has been
24 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
25 established schedule identified on Exhibit B attached hereto . . ." ~~(Exhibit K.)~~ Further,
26 Exhibit C, Required Repair Reserve Schedule, simply stated "N/A" indicating that no repair
27 reserve was required for that loan. (Exhibit K, at 7.)
28

1 ~~298.510.~~ When the loan assumption agreements were signed, the above-referenced
2 Required Repair Reserve Schedule and Required Replacement Reserve Schedule, for each
3 Property, were specifically included as part of the assumption agreement.

4 ~~299.511.~~ The statements made by Grandbridge, on behalf of itself and on behalf of
5 Fannie Mae, were either false or amounted to a mutual mistake by both parties, because
6 Grandbridge and Fannie Mae later attempted to obtain additional reserve payments in excess of
7 the schedules that were provided to Westland, and those requests for additional reserve deposits
8 included requests to deposit \$2.~~857~~ million of funds related to physical conditions that were not
9 of the same type or category as the expenses included in the schedules.

10 ~~300.512.~~ In making those statements, Fannie Mae and Grandbridge knew that
11 Westland would rely upon the amounts and types of conditions requiring reserve deposits when
12 entering into the Loan Agreements, and intended for Westland to do so, to ensure that the loans
13 would close.

14 ~~301.513.~~ Westland did rely on the amounts and types of conditions requiring
15 reserve deposits that were listed in the schedules attached to the loan assumption letters, and as
16 such Westland justifiably relied upon the information Grandbridge and Fannie Mae provided.

17 ~~302.514.~~ If Grandbridge or Fannie Mae would have had f3 or other inspection
18 company perform a PCA as thorough and with the same criteria before the assumption as it did a
19 year later, and told Westland that an additional reserve deposit would be required, then Westland
20 would have demanded that the Shamrock Entities ~~meet~~ the additional reserve funding
21 requirement prior to agreeing to assume the loan, that the terms of the purchase and/or loan
22 assumption be amended, and/or other relief from the Shamrock Entities, Fannie Mae and/or
23 Grandbridge, and without such relief, would not have entered into the two assumption
24 agreements.

25 ~~303.515.~~ As such, to the extent that ~~that~~ a finding is made that the loan agreements
26 would permit Grandbridge and Fannie Mae to demand additional reserve deposits, then the loan
27 documents should be reformed consistent with the statements contained in the loan assumption
28 letters and its attached reserve schedules due to irregularities in assumption process amounting to

1 fraud, unfairness or oppression, and if not reformed, other appropriate equitable relief to rectify
2 the inequities and unfairness of this situation, and if not, then rescinded altogether.

3 304.516. Based on the foregoing, Westland is entitled to reformation, other
4 equitable relief, or rescission of the loan agreements consistent with Grandbridge's and Fannie
5 Mae's statements that no additional reserve deposits were required for the loans.

6 517. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
7 improper demands to adjust reserves and related actions, Westland has had to hire counsel to
8 prosecute this matter and obtain reformation of the loan documents by reason of which it is
9 entitled to reasonable attorney's fees.

10 **k. ELEVENTH CAUSE OF ACTION (FOR BREACH OF CONTRACT –**
11 **LIBERTY LOAN – AGAINST GRANDBRIDGE)**

12 557. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
13 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

14 558. A valid assumption agreement was entered into between Liberty LLC, on the one
15 hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the
16 Assumption and Release Agreement.

17 559. The assumption agreement utilized the general provisions of the Multifamily
18 Loan and Security Agreement entered into between Liberty LLC's predecessor on the one hand,
19 and Fannie Mae and Grandbridge on the other hand, to specify the terms that would govern the
20 parties' practices for administration of the loan.

21 560. Upon information and belief, Grandbridge assigned its interests in a portion of the
22 Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer
23 on either the loan agreement or a portion of the agreements that were signed by Liberty LLC's
24 predecessor, which obligations were assumed by Liberty LLC.

25 561. Separately, Grandbridge signed the closing statement, which conveyed its 1%
26 loan assumption fee as "Lender."

27 562. Grandbridge signed the Liberty Loan agreements, and the assumption agreement
28 with Westland, both on its own behalf and on behalf of Fannie Mae.

1 563. Unless legally excused from doing so by the Lenders' illegal actions, Liberty LLC
2 has performed all of the duties and obligations required of it under the terms of the Loan
3 Agreement with Fannie Mae, including timely making monthly periodic loan payment and
4 paying the 1% loan assumption fee.

5 564. Unless legally excused from doing so by the Lenders' illegal actions, Liberty LLC
6 has performed all of the duties and obligations required of it under the terms of the terms of the
7 Loan Agreement with Grandbridge, including timely making monthly periodic loan payment
8 and paying the 1% loan assumption fee.

9 565. To the extent that any duties or obligations required of Westland have not been
10 performed, such duties or obligations have been excused because of Grandbridge's and Fannie
11 Mae's breach of the Liberty Loan Agreement.

12 566. Grandbridge has materially breached its Loan Agreement with Liberty LLC by
13 failing to require adequate reserves at the time of the initial loan, requesting and performing an
14 improper property condition assessment, utilizing that improper PCA to demand an adjustment
15 to reserve deposits, failing to disburse funds in response to reserve disbursement requests,
16 sending/filing improper notices, and generally violating the terms of the Multifamily Loan and
17 Security Agreement to the point that the administration has become so one-sided that Liberty
18 LLC had no option but to commence these proceedings.

19 567. That as a direct and proximate result of Grandbridge's breach of contract, Liberty
20 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
21 determined at trial.

22 568. That it has been necessary for Liberty LLC to retain counsel to prosecute this
23 action by reason of which it is entitled to reasonable attorney's fees.

24 **I. TWELFTH CAUSE OF ACTION (BREACH OF CONTRACT – SQUARE**
25 **LOAN – AGAINST GRANDBRIDGE)**

26 569. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
27 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

1 570. A valid assumption agreement was entered into between Square LLC, on the one
2 hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the
3 Assumption and Release Agreement.

4 571. The assumption agreement utilized the general provisions of the Multifamily
5 Loan and Security Agreement entered into between Liberty Square LLC's predecessor on the
6 one hand, and Fannie Mae and Grandbridge on the other hand, to specify the terms that would
7 govern the parties' practices for administration of the loan.

8 572. Upon information and belief, Grandbridge assigned its interests in a portion of the
9 Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer
10 on either the loan agreement or a portion of the agreements that were signed by Square LLC's
11 predecessor, which obligations were assumed by Square LLC.

12 573. Separately, Grandbridge signed the closing statement, which conveyed its 1%
13 loan assumption fee as "Lender."

14 574. Grandbridge signed the Square Loan agreements, and the assumption agreement
15 with Westland, both on its own behalf and on behalf of Fannie Mae.

16 575. Unless legally excused from doing so by the Lenders' illegal actions, Square LLC
17 has performed all of the duties and obligations required of it under the terms of the Loan
18 Agreement with Fannie Mae, including timely making monthly periodic loan payment and
19 paying the 1% loan assumption fee.

20 576. Unless legally excused from doing so by the Lenders' illegal actions, Square LLC
21 has performed all of the duties and obligations required of it under the terms of the terms of the
22 Loan Agreement with Grandbridge, including timely making monthly periodic loan payment
23 and paying the 1% loan assumption fee.

24 577. To the extent that any duties or obligations required of Westland have not been
25 performed, such duties or obligations have been excused because of Grandbridge's and Fannie
26 Mae's breach of the Square Loan Agreement.

27 578. Grandbridge has materially breached its Loan Agreement with Square LLC by
28 failing to require adequate reserves at the time of the initial loan, requesting and performing an

1 improper property condition assessment, utilizing that improper PCA to demand an adjustment
2 to reserve deposits, failing to disburse funds in response to reserve disbursement requests,
3 sending/filing improper notices, and generally violating the terms of the Multifamily Loan and
4 Security Agreement to the point that the administration has become so one-sided that Square
5 LLC had no option but to commence these proceedings.

6 579. That as a direct and proximate result of Grandbridge's breach of contract, Square
7 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
8 determined at trial.

9 580. That it has been necessary for Square LLC to retain counsel to prosecute this
10 action by reason of which it is entitled to reasonable attorney's fees.

11 **m. THIRTEENTH CAUSE OF ACTION (BREACH OF COVENANT OF**
12 **GOOD FAITH AND FAIR DEALING – AGAINST GRANDBRIDGE)**

13 581. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
14 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

15 582. A valid and binding agreement was formed between Westland and Fannie
16 Mae/Grandbridge on each of the two separate sets of loan agreements, related to the Properties.

17 583. Westland's agreements for the two Properties utilized the general provisions of
18 the underlying loan agreement entered into between Westland's predecessor and Fannie
19 Mae/Grandbridge to specify the terms that would govern the parties' practices for administration
20 of the loan.

21 584. In every contract, including the loans between Westland and Fannie
22 Mae/Grandbridge, there exists in law an implied covenant of good faith and fair dealing.

23 585. Both prior to the loan assumption and after, Westland acted in good faith by
24 paying Fannie Mae/Grandbridge a 1% loan assumption fee under each agreement related to the
25 Properties, providing Fannie Mae/Grandbridge access to both the Liberty Property and the
26 Square Property, paying for substantial improvements at each of the Properties, improving the
27 condition of each of the Properties and their tenant base, providing confidential business
28 documents to Fannie Mae/Grandbridge, and continuously paying Westland's full loan payments

1 on a timely basis even after Fannie Mae/Grandbridge suspended the automatic ACH payments
2 the parties had used without prior notice.

3 586. Grandbridge wrongfully and deliberately took advantage of Westland's good faith
4 actions, by, *inter alia*, failing to perform all conditions, covenants and promises required under
5 the Loan Agreements, including without limitation, altering the standard that they would apply to
6 a property condition assessment undertaken in July 2019 from the standard used at the time the
7 loan was assumed, telling Westland that they would cover the cost of the July 2019 property
8 condition assessments but then refusing to discuss the purported default unless Westland paid
9 those costs, making a demand that Westland deposit an additional \$2,845,980.00 into escrow
10 despite that the condition of its Properties had improved not deteriorated since the assumption
11 agreement was signed, and by each of these actions Grandbridge and Fannie Mae thereby
12 breached the implied covenant of good faith and fair dealing inherent in the subject agreement.

13 587. Grandbridge's actions were taken both on its own behalf as a Lender and/or
14 Servicer.

15 588. Wherefore Grandbridge did not act in good faith, that is, did not perform its
16 contract with each Counterclaimant in the manner reasonably contemplated by the parties, so that
17 each Counterclaimant has a remedy that goes beyond that of breach of the express terms of their
18 contract.

19 589. Grandbridge's actions, misrepresentations, deception, concealment, and breach of
20 the covenant of good faith and fair dealing were done intentionally with malice for the specific
21 purpose of causing injury to Liberty LLC, Square LLC, the Westland Securities Entities and the
22 Westland Credit Facility Entities.

23 590. As a direct and proximate result of Grandbridge's breach, each Counterclaimant
24 has suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

25 591. As a further direct and proximate result of Grandbridge's breach, each
26 Counterclaimant has had to hire counsel to prosecute this matter by reason of which it is entitled
27 to reasonable attorney's fees.

28

1 **n. FOURTEENTH CAUSE OF ACTION (DECLARATORY RELIEF**
2 **AGAINST GRANDBRIDGE)**

3 592. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
4 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

5 593. A genuine justiciable controversy exists relevant to the rights and obligations
6 herein regarding Westland's obligations under each of the Loan Agreements, and whether
7 Grandbridge may demand that Westland deposit additional funds into reserve accounts.

8 594. The interests of Counterclaimants, on the one hand, and Grandbridge on the other
9 are adverse.

10 595. Specifically, the present dispute that resulted in a Notice of Default and Election
11 to Sell being sent by Fannie Mae is a dispute over the parties' interpretation of Article 13.02 of
12 the Loan Agreement related to adjustments to reserve funding and the related reserve
13 administration requirements, as well as Article 6.03 related to the conditions when property
14 condition assessments may be utilized.

15 596. Westland has a legally protectable interest in the two Properties.

16 597. These issues are ripe for judicial determination, because on or about October 18,
17 2019, Grandbridge served a Notice of Demand, both as Servicer/Lender, and/or on behalf of
18 Fannie Mae.

19 598. These issues are ripe for judicial determination, because on or about July 15,
20 2020, Fannie Mae served Westland with a Notice of Default and Intent to Sell Westland's
21 Properties.

22 599. These issues are ripe for judicial determination, because on or about August 12,
23 2020, Fannie Mae filed a complaint seeking the appointment of a receiver to ouster Westland
24 from its Properties.

25 600. Westland seeks an order from this Court declaring that Article 13.02 and Article
26 6.03 are only implicated if the condition of the Properties has physically deteriorated, or
27 impaired the value of Fannie Mae's and Grandbridge's security, and that no additional reserve
28 deposit is needed.

1 601. Westland seeks an order from this Court declaring that Fannie Mae and/or
2 Grandbridge breached the terms of the two Loan Agreements by demanding a property condition
3 assessment, demanding the adjustment of reserve deposits without any proper basis, and filing a
4 NOD.

5 602. That it has been necessary for Westland to retain the services of legal counsel for
6 which Westland is entitled to recover such costs and expenses from Grandbridge.

7 **o. FIFTEENTH CAUSE OF ACTION (FRAUD & CONCEALMENT**
8 **AGAINST GRANDBRIDGE)**

9 603. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
10 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

11 604. That Westland entered into its Loan Agreement relying on Fannie Mae and
12 Grandbridge continuing to utilize the same standard for evaluating the condition of the Properties
13 that had been used at the origination of the Loan Agreements during late 2017, and at the time of
14 the loan assumption during the summer of 2018.

15 605. When Grandbridge forwarded documents regarding the loan assumption and loan
16 agreements to Westland, it did so not only on its own behalf, but also on behalf of Fannie Mae,
17 who advised Grandbridge to forward those documents to Westland with the intent that Westland
18 would be provided the loan assumption, loan agreements, and reserve schedules, and that
19 Westland would rely on those documents.

20 606. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
21 Fannie Mae to Liberty LLC that, “after a thorough review and analysis of the Proposed
22 Borrower’s [Liberty LLC’s] financial and managerial capacity, the Assumption has been
23 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
24 established schedule identified on Exhibit B attached hereto; No Change to the Required Repair
25 Reserve of \$39,375.00 as identified in schedule on Exhibit C attached hereto . . .” (Exhibit J.)
26 Further, Exhibit C, Required Reserve Schedule, listed all items as completed, except for a
27 \$9,375.00 holdback for “Misc. Concrete and Fence Repairs. Sports Court Resurfacing” that was
28 shown as having already been fully funded. (Exhibit J, at 7.)

1 607. Further, by letter dated August 20, 2018, Grandbridge represented on behalf of
2 itself and Fannie Mae to Square LLC that, “after a thorough review and analysis of the Proposed
3 Borrower’s [Square LLC’s] financial and managerial capacity, the Assumption has been
4 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
5 established schedule identified on Exhibit B attached hereto . . .” (Exhibit K.) Further, Exhibit
6 C, Required Repair Reserve Schedule, simply stated “N/A” indicating that no repair reserve was
7 required for that loan. (Exhibit K, at 7.)

8 608. Grandbridge knew that Westland relied upon the amounts and types of conditions
9 requiring reserve deposits when entering into the Loan Agreements.

10 609. To induce Westland to consent to the Loan Agreements, to collect the loan
11 assumption fee from Westland, for Grandbridge to improve its own liquidity position with
12 Fannie Mae, to improve the creditworthiness of Fannie Mae’s loan portfolio, to attempt to
13 improperly generate additional fees and costs, and to improperly profit off of holding Westland’s
14 funds in a non-interest bearing escrow account, Grandbridge did not inform Westland that it
15 planned to seek additional reserves at the time the Loan Agreements were assumed by Westland..

16 610. That Fannie Mae does credit reviews and monitoring of Grandbridge’s lending
17 practices, and upon information and belief, that Fannie Mae determined that Grandbridge failed
18 to follow Fannie Mae’s credit and underwriting criteria for loans in underwriting the November
19 2017 loan.

20 611. Upon information and belief, that Fannie Mae required that Grandbridge obtain
21 additional security due to its poor underwriting, and thus Grandbridge had no intent to service
22 the Loan Agreements consistent with the documentation that was provided at the time of the
23 August 2018 loan assumption.

24 612. Additionally, in July 2019, despite that the Loan Agreements permitted Fannie
25 Mae to charge for a Property Condition Assessment based on deterioration, a PCA of the
26 Properties was requested by Lenders, and Joseph Greenhaw represented on behalf of
27 Grandbridge and Fannie Mae that Westland would not be required to pay the cost of the PCA if
28 it provided access to the Properties, and that if any deficiencies were found that Grandbridge and

1 Fannie Mae would work with Westland by only requiring a small addition to the reserve
2 accounts consistent with deferred maintenance schedules.

3 613. Westland knew that there had not been any deterioration in the condition of the
4 Properties, and relied upon Mr. Greenhaw's statement when providing access to the Properties in
5 September 2019, which as represented would only require nominal action by Westland in order
6 to preserve its broader relationship with Fannie Mae.

7 614. That had Westland known that Fannie Mae and Grandbridge would require an
8 additional deposit of over \$2.85 million of additional reserve funding based on a loan balance of
9 approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a loan
10 with a seven year term, Counterclaimants would not have entered into the assumption agreement
11 and would have obtained alternative financing.

12 615. That had Westland known that Fannie Mae and Grandbridge would require an
13 additional deposit of over \$2.85 million of additional reserve funding based on a loan balance of
14 approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a loan
15 with a seven year term, as well as later having Lenders seek repayment for the improper PCA
16 costs and related legal fees, Counterclaimants would not have permitted access to the Properties
17 for a PCA that was in excess of what was required by the Loan Agreements.

18 616. Westland reasonably relied upon the types of expenses contained in the repair and
19 replacement escrow accounts schedules, because Westland has entered into numerous loan
20 agreements previously, but on those loan agreements, the lender never requested any significant
21 adjusted reserve deposits.

22 617. Westland relied on Fannie Mae's material misstatements and omissions by paying
23 a 1% loan assumption fee, providing Fannie Mae access to the Property, paying for substantial
24 improvements at the Property, improving the condition of the Property and its tenant base,
25 providing Fannie Mae confidential business documents, and continuously paying loan payments.

26 618. However, Fannie Mae and Grandbridge knew that they were improperly seeking a
27 Property Condition Assessment report, because prior to conducting the property condition
28 assessment, during a phone call in July 2019, Grandbridge's Senior Vice President of Loan

1 Servicing and Asset Management Joe Greenhaw represented that Westland would not be
2 required to pay the cost of the assessment if Westland agreed to provide f3, Inc. PCA access to
3 the Properties.

4 619. _____

5 620. As a result of Grandbridge's misrepresentations, Westland was induced to enter
6 into the assumption agreement with Fannie Mae as lender and Grandbridge as servicer, and to
7 permit Fannie Mae and Grandbridge to access its Properties to conduct a PCA when in excess of
8 what was required by the Loan Agreements, which has damaged Westland.

9 621. As a direct and proximate result of Grandbridge's misstatements and omissions,
10 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be
11 proven at trial, because, *inter alia*, this is the only default that Westland has ever suffered, it will
12 impair Westland's credit rating leading to long term higher borrowing costs, and it has impaired
13 Westland's ability to re-finance its Properties at a time when interest rates are at an all-time low.

14 622. By reason of the foregoing, Grandbridge acted with oppression, fraud and malice,
15 and therefore, Westland is entitled to exemplary and punitive damages.

16 **p. SIXTEENTH CAUSE OF ACTION (NEGLIGENT**
17 **MISREPRESENTATION AND CONCEALMENT AGAINST**
18 **GRANDBRIDGE)**

19 623. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
20 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

21 624. Grandbridge supplied information and made material misrepresentations to
22 Westland, including without limitation, as detailed above that adequate reserve amounts had
23 already been submitted, consistent with the schedules attached to the loan assumption letters and
24 documentation.

25 625. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
26 Fannie Mae to Westland that, it conducted "a thorough review and analysis of the Proposed
27 Borrower's financial and managerial capacity" before approving the assumption.

28

1 626. Upon information and belief, Grandbridge negligently misrepresented that it
2 conducted an adequate review when setting the reserve amounts in August 2018, prior to
3 Westland signing the loan assumption, because a short one (1) year later, it requested an
4 additional \$2.85 million be placed into escrow with no deterioration of the Properties.

5 627. The information and representations made by Grandbridge was false, in that
6 unbeknownst to Westland they knew the loan did not have sufficient security, and that there was
7 a substantial likelihood they would attempt to seek additional reserves.

8 628. Grandbridge supplied the information and made the representations to induce
9 Westland to rely upon it, to act or refrain from acting in reliance upon it, and to have Westland
10 enter into the assumption agreement.

11 629. Grandbridge owed Westland a duty not to make material misrepresentations.

12 630. Westland justifiably relied upon the information Grandbridge provided.

13 631. As a direct and proximate result of Grandbridge's misstatements and omissions,
14 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be
15 proven at trial, because, *inter alia*, this is the only default that Westland has ever suffered and it
16 will impair Westland's credit rating and leading to long term higher borrowing costs, and it has
17 impaired Westland's ability to re-finance its Properties at a time when interest rates are at an all-
18 time low.

19 **q. SEVENTEENTH CAUSE OF ACTION (INTENTIONAL INTERFERENCE**
20 **WITH CONTRACT AGAINST GRANDBRIDGE)**

21 632. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
22 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

23 633. To the extent that Grandbridge is not found to be a party to the assumption
24 agreements and/or the loan agreements, this cause of action is pleaded in the alternative against it
25 by Counterclaimants.

26 634. Based on Westland's financial disclosures at the time of the loan assumption,
27 Grandbridge knew Westland Real Estate Group is a privately held real estate company with a
28 sizable portfolio of properties, and approximately \$800 million in loans outstanding.

1 635. Each of the loans underlying that are part of that \$800 million loan portfolio is a
2 written contractual agreement. Upon information and belief, Grandbridge knows these contracts
3 and lending arrangements exist.

4 636. Further, Grandbridge knew that \$300 million of Westland's loans are outstanding
5 with Fannie Mae, and that it is economically advantageous for Westland, including
6 Counterclaimants, to have access to lender funds in other to refinance its properties.

7 637. Grandbridge committed intentional acts intended or designed to disrupt the
8 contractual loan agreements that Westland, including Counterclaimants, have with Fannie Mae,
9 and Counterclaimants' ability to refinance those loan agreements with Fannie Mae.

10 638. Grandbridge knew that by manufacturing the purported default, Fannie Mae
11 would blacklist Westland, including the Counterclaimants, by placing a "lending hold" on any of
12 Counterclaimants' loan, which would have the effect of limiting, delaying, and/or disrupting
13 Counterclaimants' ability to refinance a loan with Fannie Mae.

14 639. Grandbridge manufactured the Default in an attempt to put financial pressure on
15 Counterclaimants, despite that it knew it would cause disruption to Counterclaimants' business,
16 and preclude it from obtaining favorable rates from one of only two primary lenders in the
17 multifamily housing loan market, and upon information and belief, Grandbridge intended to
18 cause harm to the contractual relationship between Counterclaimants and Fannie Mae.

19 640. There was, and continues to be, actual disruption of the written loan agreements
20 that Counterclaimants have with Fannie Mae, as Grandbridge's actions have in fact resulted in
21 Counterclaimants being placed on Fannie Mae's blacklist, which has caused Counterclaimants
22 harm.

23 641. As a direct and proximate result of Fannie Mae's breach, Counterclaimants have
24 suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

25 642. By reason of the foregoing, Grandbridge acted with oppression, fraud and malice,
26 and therefore, Counterclaimants are entitled to exemplary and punitive damages in excess of
27 \$15,000.

1 **r. EIGHTEENTH CAUSE OF ACTION (CONVERSION AGAINST**
2 **GRANDBRIDGE)**

3 643. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
4 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

5 644. Westland has submitted several prior reserve reimbursement requests that went
6 unanswered by Grandbridge, including before its November 2019 demand for additional reserve
7 funding.

8 645. Westland and its predecessor submitted funds related to two fire insurance claims
9 to Grandbridge, which earmarked funds were to be held in escrow until the two fire-damaged
10 building were rebuilt.

11 646. The fire-damaged buildings were completely rebuilt with Westland's funds.

12 647. Westland has submitted reserve disbursement requests for the release of those
13 funds, and other reserve disbursement requests for work that was completed, each of which was
14 accompanied by invoices, proof of payment, and documentation showing approval of all required
15 permits, but Grandbridge has failed to respond to those requests.

16 648. Grandbridge has asserted that it transferred Westland's funds to Fannie Mae after
17 the December 2019 default was asserted.

18 649. As such, Grandbridge has wrongfully exerted dominion over Westland's personal
19 property, including, without limitation, the funds that Grandbridge and/or Fannie Mae continued
20 to hold in reserve accounts, and the funds they were improperly is holding in reserve accounts,
21 that were earmarked for reconstruction of two fire damaged buildings at the Liberty Property from
22 the date of disbursement until the fire damaged funds were released in May 2021, several months
23 after the Court entered an order for those funds to be released in November 2020, and
24 Grandbridge has thereby wrongly converted the funds to their own use and benefit.

25 650. Grandbridge's continued dominion over Westland's personal property was
26 unauthorized and inconsistent with Westland's property rights.

27 651. Grandbridge's dominion over Westland's personal property deprived Westland of
28 all of their property rights relating thereto.

1 652. Grandbridge's acts constitute conversion.

2 653. As a direct and proximate result of Grandbridge's conversion, Westland has
3 suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

4 654. Further, due to the wanton, malicious, and intentional conduct of Grandbridge,
5 Westland is entitled to an award of exemplary and punitive damages against Grandbridge.

6 655. Grandbridge knew that by refusing to return the converted proceeds after just
7 demand, Borrowers would have to hire counsel to have those funds returned. Thus, it was
8 foreseeable that Borrowers would incur attorney's fees as special damages. Borrowers have
9 incurred these fees and request same as part of their special damages for conversion.

10 **s. NINETEENTH CAUSE OF ACTION (INJUNCTIVE RELIEF AGAINST**
11 **GRANDBRIDGE)**

12 656. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
13 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

14 657. On or about July 15, 2020, two NODs that were filed against the Liberty Property
15 and the Square Property and served on Westland.

16 658. Upon information and belief, in Nevada, the typical period for a foreclosure sale
17 to occur after a borrower receives a NOD is 120 days.

18 659. As Westland has made all debt service payments, and complied with the terms of
19 the Loan Agreements, the Properties rightfully belong to Westland.

20 660. Fannie Mae and Grandbridge are attempting to utilize Nevada's non-judicial
21 foreclosure process to improperly seize and sell Westland's Liberty Property and Square
22 Property.

23 661. Real property is a unique asset, and on that basis, in the event that a wrongful
24 foreclosure sale occurs, Westland will suffer extreme hardship and actual and impending
25 irreparable loss and damage.

26 662. Westland has no adequate or speedy remedy at law to prevent the sale of the
27 Properties, and injunctive relief is therefore Westland's only means for securing relief.

28 663. Westland is likely to succeed in this lawsuit on the merits of its claims.

1 664. Based on the foregoing, Westland is entitled to temporary restraining orders and
2 preliminary and permanent injunctive relief to preserve the status quo, to mitigate its damages,
3 and to prevent further irreparable injury to Westland, including, without limitation by: (a)
4 enjoining Fannie Mae and/or Grandbridge from any further attempts to foreclose on the
5 Properties related to their baseless requests to adjust the reserve deposits, and (b) enjoining
6 Fannie Mae and/or Grandbridge from any further attempts to coerce Westland into providing
7 additional reserves or to pay for the expenses related to the default that Grandbridge
8 manufactured.

9 665. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
10 improper demands to adjust reserves, their filing of the NOD, and the filing of their Complaint
11 seeking appointment of a receiver, Westland has had to hire counsel to prosecute this matter by
12 reason of which it is entitled to reasonable attorney's fees.

13 **t. TWENTIETH CAUSE OF ACTION (EQUITABLE RELIEF/RESCISSION/**
14 **REFORMATION AGAINST GRANDBRIDGE)**

15 666. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
16 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

17 667. On or about August 29, 2018, Westland entered into two assumption agreements
18 for the loans applicable to the Liberty Property and the Square Property.

19 668. Prior to signing the assumption, Grandbridge individually, and on behalf of
20 Fannie Mae, forwarded Westland a loan assumption agreement letter, which contained the terms
21 under which it would permit Westland's assumption of the Liberty Loan and Square Loan.

22 669. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
23 Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed
24 Borrower's [Liberty LLC's] financial and managerial capacity, the Assumption has been
25 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
26 established schedule identified on Exhibit B attached hereto; No Change to the Required Repair
27 Reserve of \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.)
28 Further, Exhibit C, Required Reserve Schedule, listed all items as completed, except for a

1 \$9,375.00 holdback for “Misc. Concrete and Fence Repairs. Sports Court Resurfacing” that was
2 shown as having already been fully funded. (Exhibit J, at 7.)

3 670. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and
4 Fannie Mae to Square LLC that, “after a thorough review and analysis of the Proposed
5 Borrower’s [Square LLC’s] financial and managerial capacity, the Assumption has been
6 approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or
7 established schedule identified on Exhibit B attached hereto . . .” (Exhibit K.) Further, Exhibit
8 C, Required Repair Reserve Schedule, simply stated “N/A” indicating that no repair reserve was
9 required for that loan. (Exhibit K, at 7.)

10 671. When the loan assumption agreements were signed, the above-referenced
11 Required Repair Reserve Schedule and Required Replacement Reserve Schedule, for each
12 Property, were specifically included as part of the assumption agreement.

13 672. The statements made by Grandbridge, on behalf of itself and on behalf of Fannie
14 Mae, were either false or amounted to a mutual mistake by both parties, because Grandbridge
15 and Fannie Mae later attempted to obtain additional reserve payments in excess of the schedules
16 that were provided to Westland, and those requests for additional reserve deposits included
17 requests to deposit \$2.85 million of funds related to physical conditions that were not of the same
18 type or category as the expenses included in the schedules.

19 673. In making those statements, Fannie Mae and Grandbridge knew that Westland
20 would rely upon the amounts and types of conditions requiring reserve deposits when entering
21 into the Loan Agreements, and intended for Westland to do so, to ensure that the loans would
22 close.

23 674. Westland did rely on the amounts and types of conditions requiring reserve
24 deposits that were listed in the schedules attached to the loan assumption letters, and as such
25 Westland justifiably relied upon the information Grandbridge and Fannie Mae provided.

26 675. If Grandbridge or Fannie Mae would have had f3 or another inspection company
27 perform a PCA as thorough and with the same criteria before the assumption as it did a year
28 later, and told Westland that an additional reserve deposit would be required, then Westland

1 would have demanded that the Shamrock Entities met the additional reserve funding requirement
2 prior to agreeing to assume the loan, that the terms of the purchase and/or loan assumption be
3 amended, and/or other relief from the Shamrock Entities, Fannie Mae and/or Grandbridge, and
4 without such relief, would not have entered into the two assumption agreements.

5 676. As such, to the extent that a finding is made that the loan agreements would
6 permit Grandbridge and Fannie Mae to demand additional reserve deposits, then the loan
7 documents should be reformed consistent with the statements contained in the loan assumption
8 letters and its attached reserve schedules due to irregularities in assumption process amounting to
9 fraud, unfairness or oppression, and if not reformed, other appropriate equitable relief to rectify
10 the inequities and unfairness of this situation, and if not, then rescinded altogether.

11 677. Based on the foregoing, Westland is entitled to reformation, other equitable relief,
12 or rescission of the loan agreements consistent with Grandbridge's and Fannie Mae's statements
13 that no additional reserve deposits were required for the loans.

14 678. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's
15 improper demands to adjust reserves and related actions, Westland has had to hire counsel to
16 prosecute this matter and obtain reformation of the loan documents by reason of which it is
17 entitled to reasonable attorney's fees.

18 **u. TWENTY-FIRST CAUSE OF ACTION (FOR BREACH OF CONTRACT –**
19 **LIBERTY PSA – AGAINST SHAM VI)**

20 679. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
21 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

22 680. A valid Purchase Agreement was entered into between Liberty LLC and/or
23 Amusement, on the one hand, and Sham VI on the other hand, on June 22, 2018, for the purchase
24 of the Property located at 4870 Nellis Oasis Lane, Las Vegas, NV 89115.

25 681. The Purchase Agreement required that Liberty LLC assume Sham VI's loan with
26 Fannie Mae and Grandbridge, dated November 2, 2017.

27 682. By funding its initial deposit, providing the additional required funds at closing on
28 August 29, 2018, and assuming the borrower's further obligations on the Sham VI's loan with

1 Fannie Mae and Grandbridge, Liberty LLC performed all of its remaining obligations as a buyer
2 pursuant to the purchase and sale agreement.

3 683. To the extent that any duties or obligations required of Liberty LLC have not been
4 performed, such duties or obligations have been excused because of Sham VI's non-performance
5 of the purchase and sale agreement.

6 684. Sham VI materially breached its agreement with Liberty LLC by failing to
7 perform its obligations consistent with the terms of the Purchase Agreement, the Loan
8 Agreement, and Nevada law, including by providing inaccurate/misleading financial disclosures,
9 failing to bring all vacant units to rent ready condition, failing to remove tenants who did not pay
10 rent, failing to return vacant units and units remaining in default for months to rent ready
11 condition, failing to timely commence repairs to fire damaged buildings, and generally violating
12 the terms of the purchase and sale agreement.

13 685. That as a direct and proximate result of Sham VI's breach of contract, Liberty
14 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
15 determined at trial.

16 686. That as a direct and proximate result of Sham VI's breach of contract and
17 requirement that Liberty LLC assume the Loan Agreement and that Counterclaimants assume the
18 guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been
19 damaged in an amount in a further amount to be determined at the time of trial and may be liable
20 to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any
21 damages arising from Fannie Mae's related foreclosure proceedings.

22 687. That it has been necessary for Liberty LLC to retain counsel to prosecute this
23 action by reason of which it is entitled to reasonable attorney's fees, pursuant to the Purchase
24 Agreement.

25 **v. TWENTY-SECOND CAUSE OF ACTION (BREACH OF CONTRACT –**
26 **SQUARE PSA – AGAINST SHAM VII)**

27 688. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
28 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

1 689. A valid Purchase Agreement was entered into between Amusement and Square
2 LLC, on the one hand, and Sham VII on the other hand, on June 22, 2018, for the purchase of the
3 Property located at 5025 Nellis Oasis Lane, Las Vegas, NV 89115.

4 690. The Purchase Agreement required that Square LLC assume Sham VII's loan with
5 Fannie Mae and Grandbridge, dated November 2, 2017.

6 691. By funding its initial deposit, providing the additional required funds at closing on
7 August 29, 2018, and assuming the borrower's further obligations on the Sham VII's loan with
8 Fannie Mae and Grandbridge, Square LLC performed all of its remaining obligations as a buyer
9 pursuant to the purchase and sale agreement.

10 692. To the extent that any duties or obligations required of Square LLC have not been
11 performed, such duties or obligations have been excused because of Sham VII's non-
12 performance of the purchase and sale agreement.

13 693. Sham VII materially breached its agreement with Square LLC by failing to
14 perform its obligations consistent with the terms of the Purchase Agreement, the Loan
15 Agreement, and Nevada law, including by providing inaccurate/misleading financial disclosures,
16 failing to bring all vacant units to rent ready condition, failing to remove tenants who did not pay
17 rent, failing to return vacant units and units remaining in default for months to rent ready
18 condition, and generally violating the terms of the purchase and sale agreement.

19 694. That as a direct and proximate result of Sham VII's breach of contract, Square
20 LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be
21 determined at trial.

22 695. That as a direct and proximate result of Sham VII's breach of contract and
23 requirement that Square LLC assume the Loan Agreement and that Counterclaimants assume the
24 guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been
25 damaged in an amount in a further amount to be determined at the time of trial and may be liable
26 to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any
27 damages arising from Fannie Mae's related foreclosure proceedings.

1 696. That it has been necessary for Square LLC to retain counsel to prosecute this
2 action by reason of which it is entitled to reasonable attorney's fees pursuant to the Purchase
3 Agreement.

4 **w. TWENTY-THIRD CAUSE OF ACTION (BREACH OF COVENANT OF**
5 **GOOD FAITH AND FAIR DEALING – AGAINST SHAM VI & SHAM**
6 **VII)**

7 697. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
8 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

9 698. A valid and binding agreement was formed between Westland and the Sham
10 Defendants on each of the two separate Purchase Agreements.

11 699. As a matter of public policy the implied covenant of good faith and fair dealing is
12 a covenant incorporated into every Nevada contract, and as such the Purchase Agreements
13 between Westland and the Sham VI and Sham VII include an implied covenant of good faith and
14 fair dealing regardless of any oppressive terms drafted by the Sham Defendants in an attempt to
15 shield the Sham Defendants from any future claims.

16 700. Sham Defendants breached the duty of good faith and fair dealing by acting in a
17 manner unfaithful to the purpose of the purchase and sale agreement, including those actions
18 outlined in this Counterclaim.

19 701. Specifically, Sham Defendants wrongfully and deliberately took advantage of
20 Westland's good faith actions, by, *inter alia*, failing to perform all conditions, covenants and
21 promises required under the purchase and sale agreement, including without limitation, failing to
22 provide complete and accurate financial information, failing to bring all vacant units to rent
23 ready condition, failing to remove tenants who did not pay rent, failing to return vacant units and
24 units remaining in default for months to rent ready condition, and by each of these actions the
25 Sham Defendants thereby breached the implied covenant of good faith and fair dealing inherent
26 in the subject agreement.

27 702. Sham Defendants' actions were taken both on their own behalf, and as owning
28 members of the corporate entities.

1 703. Wherefore, Sham Defendants did not act in good faith, that is, did not perform its
2 contract with each Liberty LLC and Village LLC in the manner reasonably contemplated by the
3 parties, so that both Liberty LLC and Village LLC have a remedy that goes beyond that of
4 breach of the express terms of their contract.

5 704. Sham Defendants' actions, misrepresentations, deception, concealment, and
6 breach of the covenant of good faith and fair dealing were done intentionally with malice for the
7 specific purpose of causing injury to Liberty LLC and Square LLC.

8 705. As a direct and proximate result of Sham Defendants' breach, each
9 Counterclaimant has suffered damages in excess of \$15,000.00, the exact amount of which will
10 be proven at trial.

11 706. That as a direct and proximate result of the Sham Defendant's breach of covenant
12 of good faith and fair dealing and requirement that Counterclaimants assume the Loan
13 Agreements and guaranties, which the Sham Defendants were obligated to fulfill,
14 Counterclaimants have been damaged in an amount in a further amount to be determined at the
15 time of trial and may be liable to Counterclaimants for all or part of any claim that Fannie Mae
16 has plead against them or any damages arising from Fannie Mae's related foreclosure
17 proceedings.

18 707. As a further direct and proximate result of Sham Defendants' breach, each
19 Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled
20 to reasonable attorney's fees pursuant to the Purchase Agreement.

21 **x. TWENTY-FOURTH CAUSE OF ACTION (BREACH OF EXPRESS AND**
22 **IMPLIED WARRANTY AGAINST SHAM VI & SHAM VII)**

23 708. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
24 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

25 709. A valid and binding agreement was formed between Westland and SHAM VI &
26 SHAM VII on each of the two separate Purchase Agreements.

27 710. The Purchase Agreement contained express warranty provisions in Section 6.3 of
28 the Purchase Agreement, warranting that SHAM VI and SHAM VII were qualified to do

1 business in Nevada; the Sham Defendants had the full power and authority to execute, deliver
2 and perform their obligations under the Purchase Agreements; the Purchase Agreements were
3 valid and binding; none of SHAM VI's and SHAM VII's interests were impaired by bankruptcy,
4 trustee oversight, a creditor assignment; an attachment; "the taking of, failure to take, or
5 submission to any action indicating an inability to meet its financial obligations as they accrue;"
6 or dissolution, liquidation or death; the sale was not in furtherance of a fraudulent conveyance or
7 transfer; and the representations regarding the balances and contents of the loan documents were
8 accurate.

9 711. In addition, Nevada law provides that above-referenced statements regarding the
10 repairs that Sham Defendants agreed to perform, and the receivables and income the Properties
11 were generating, constitute express warranties.

12 712. Counterclaimants reasonably relied upon the Sham Defendant's representations
13 regarding repairs to be performed and the condition of the Properties.

14 713. The Sham Defendants breach that warranty, by failing to perform the repairs that
15 were promised and by providing financial statements that incorporated misrepresentations or
16 concealed material information about those financial statements.

17 714. By letter dated February 28, 2019, Counterclaimants provided notice that it was
18 preserving its right to make such a claim based on such a breach.

19 715. As a direct and proximate result of Sham Defendants' breach, each
20 Counterclaimant has suffered damages in excess of \$15,000.00, the exact amount of which will
21 be proven at trial.

22 716. That as a direct and proximate result of the Sham Defendant's breach of express
23 and implied warranties and requirement that Counterclaimants assume the Loan Agreements and
24 guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been
25 damaged in an amount in a further amount to be determined at the time of trial and may be liable
26 to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any
27 damages arising from Fannie Mae's related foreclosure proceedings.

1 717. As a further direct and proximate result of Sham Defendants' breach, each
2 Westland entity has had to hire counsel to prosecute this matter by reason of which it is entitled
3 to reasonable attorney's fees pursuant to the Purchase Agreement.

4 **y. TWENTY-FIFTH CAUSE OF ACTION (FRAUD & CONCEALMENT**
5 **AGAINST SHAM DEFENDANTS)**

6 718. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
7 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

8 719. As addressed above, the Sham Defendants misrepresented the value of the
9 Property to Counterclaimants, by providing false information and/or concealing material
10 information regarding the income generated, occupancy rates, aged receivables, and rent
11 delinquency balances at the Properties.

12 720. Specifically, the Sham Defendants repeatedly made several misrepresentations,
13 including but not limited to:

- 14 a. Within the December 2014 press releases that remaining accessible at least
15 through the closing date of the transaction;
16 b. By providing false financial information to the Sham Defendant's brokers related
17 to the financial information provided on April 11, 2018, with the intent that it be
18 repeated to Counterclaimants, and which information was provided to
19 Counterclaimants electronically on April 11, 2018;
20 c. By providing false financial information to broker Mongkolsakulkit on June 26,
21 2018, with the intent that it be repeated to Counterclaimants, which information
22 was provided to Counterclaimants electronically on June 26, 2018; and
23 d. By providing false financial information to brokers Carll & Mongkolsakulkit on
24 July 4, 2018, with the intent that it be repeated to Counterclaimants, which
25 information was provided to Counterclaimants electronically on July 5, 2018.

26 721. Each of the documents referenced in the foregoing paragraph either contained
27 false information or concealed material facts, which overstated income, minimized delinquency
28 balances or failed to convey the true occupancy rates at the Properties.

1 722. From the Sham Defendants prior experiences with Westland and Amusement
2 during the failed transaction in 2017, the Sham Defendants knew and intended that Westland and
3 Amusement would find the information material and would rely on that information.

4 723. Weinstein's reassurances, on behalf of herself and the other Sham Defendants, to
5 Counterclaimants' residential asset manager on August 28 and to Counterclaimants' counsel on
6 August 29, 2018, regarding shredding and the status of keys were knowingly false.

7 724. Based on that false financial information, Westland and Amusement entered into
8 the Purchase Agreements.

9 725. Westland and Amusement relied on the Sham Defendants misrepresentations
10 regarding the income generated, occupancy rates, and rent deficiency balances when entering
11 into the Purchase Agreements in June 2018, assuming the Loan Agreements in August 2018, and
12 closing the purchase transaction in August 2018.

13 726. Westland and Amusement reasonably relied upon the false information provided,
14 because the Sham Defendants limited Counterclaimants from obtaining such information from
15 other sources via the Purchase Agreement, the Sham Defendants provided that Counterclaimants
16 were not permitted to contact their employees, there was no outside source of obtaining that
17 information after the Sham Defendants began self-managing the properties over two years prior
18 to Counterclaimants' purchase of the Properties, and the Sham Defendants failed to produce full
19 electronic records until after the purchase was completed. Further, Westland reasonably relied
20 upon the financial information provided, because Westland has entered into numerous purchase
21 agreements previously, and for those purchase agreements the seller's financials were accurate.

22 727. Had Westland and Amusement known that the Sham Defendants had
23 misrepresented the financial information, or that they had no intention of making the repairs
24 agreed to in the Purchase Agreements, or that they had concealed material adverse information,
25 Westland would have required a multimillion discount on the Purchase Agreements.

26 728. As a result of the Sham Defendants' misrepresentations, Westland and
27 Amusement were induced to enter into the Purchase Agreement and to assume the Loan
28 Agreements with Fannie Mae/Grandbridge, which has damaged Counterclaimants.

1 729. As a direct and proximate result of the Sham Defendants' misstatements and
2 omissions, Counterclaimants have suffered damages in excess of \$15,000.00, the exact amount
3 of which will be proven at trial.

4 730. That as a direct and proximate result of the Sham Defendant's fraud and
5 concealment and requirement that Counterclaimants assume the Loan Agreements and
6 guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been
7 damaged in an amount in a further amount to be determined at the time of trial and may be liable
8 to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any
9 damages arising from Fannie Mae's related foreclosure proceedings.

10 731. By reason of the foregoing, the Sham Defendants acted with oppression, fraud
11 and malice, and therefore, Westland and Amusement are entitled to exemplary and punitive
12 damages;

13 732. By reason of the foregoing, the Sham Defendants knew that their actions would
14 cause Counterclaimants to be sued by Lenders due to the requirement that the loan be assumed
15 and as a result of their false financial statements, misrepresentations, and concealments, and
16 therefore each Westland entity has had to hire counsel to prosecute this matter by reason of
17 which it is entitled to reasonable attorney's fees as special damages.

18 **z. TWENTY-SIXTH CAUSE OF ACTION (NEGLIGENT**
19 **MISREPRESENTATION AGAINST SHAM DEFENDANTS)**

20 733. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
21 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

22 734. The Sham Defendants supplied information and made material misrepresentations
23 to Westland and Amusement, including without limitation, as detailed above that overstated
24 income generated, overstated occupancy rates, understated aged receivables, and understated rent
25 delinquency balances at the Properties.

26 735. Specifically, the Sham Defendants repeatedly made several misrepresentations,
27 including but not limited to:

- 1 a. Within the December 2014 press releases that remained accessible at least
2 through the closing date of the transaction;
- 3 b. By providing false financial information to the Sham Defendant's brokers related
4 to the financial information provided on April 11, 2018, with the intent that it be
5 repeated to Counterclaimants, and which information was provided to
6 Counterclaimants electronically on April 11, 2018;
- 7 c. By providing false financial information to broker Mongkolsakulkit on June 26,
8 2018, with the intent that it be repeated to Counterclaimants, which information
9 was provided to Counterclaimants electronically on June 26, 2018; and
- 10 d. By providing false financial information to brokers Carll & Mongkolsakulkit on
11 July 4, 2018, with the intent that it be repeated to Counterclaimants, which
12 information was provided to Counterclaimants electronically on July 5, 2018.

13 736. Each of the documents referenced in the foregoing paragraph either contained
14 false information or concealed material facts, which overstated income, minimized delinquency
15 balances or failed to convey the true occupancy rates at the Properties.

16 737. Weinstein's reassurances, on behalf of herself and the other Sham Defendants, to
17 Counterclaimants' residential asset manager on August 28 and to Counterclaimants' counsel on
18 August 29, 2018, regarding shredding were false, and to the extent that Weinstein did not know
19 that the representation was false, she negligently made reassurances regarding shredding and the
20 status of keys at the Properties.

21 738. Upon information and belief, the Sham Defendants negligently misrepresented the
22 financial information, because when the electronic information was provided days after closing,
23 the inaccurate and false financial information regarding the Properties was discovered.

24 739. The information and representations made by the Sham Defendants was false, in
25 that unbeknownst to Westland and Amusement the Sham Defendants knew the Properties had a
26 lower rate of occupancy and that numerous tenants had not been evicted.

27 740. The Sham Defendants supplied the information and made the representations to
28 induce Westland and Amusement to rely upon it, to act or refrain from acting in reliance upon it,

1 and to have Westland and Amusement enter into the Purchase Agreement and assume the Loan
2 Agreements.

3 741. The Sham Defendants owed Westland and Amusement a duty not to make
4 material misrepresentations.

5 742. Westland and Amusement justifiably relied upon the information the Sham
6 Defendants provided.

7 743. As a direct and proximate result of the Sham Defendants' misstatements and
8 omissions, Westland and Amusement have suffered damages in excess of \$15,000.00, the exact
9 amount of which will be proven at trial.

10 744. That as a direct and proximate result of the Sham Defendant's negligent
11 misrepresentations and requirement that Counterclaimants assume the Loan Agreements and
12 guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been
13 damaged in an amount in a further amount to be determined at the time of trial and may be liable
14 to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any
15 damages arising from Fannie Mae's related foreclosure proceedings.

16 745. By reason of the foregoing, the Sham Defendants knew that their actions would
17 cause Counterclaimants to be sued by Lenders due to the requirement that the loan be assumed
18 and as a result of their false financial statements and negligent misrepresentations, and therefore
19 each Westland entity has had to hire counsel to prosecute this matter by reason of which it is
20 entitled to reasonable attorney's fees as special damages.

21 **aa. TWENTY-SEVENTH CAUSE OF ACTION (NEGLIGENT HIRING AND**
22 **NEGLIGENT SUPERVISION AGAINST SHAM DEFENDANTS)**

23 746. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
24 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

25 747. In addition to their direct liability, Sham Defendants, and each of them, known
26 and unknown, were and are vicariously liable for the acts and omissions of any staff, agents,
27 apparent agents, servants, contractors, employees or such other persons or entities, consultants,

28

1 independent contractors whether in house or outside, entities, individuals, agencies or pools
2 which in any manner caused or contributed to Counterclaimants' irreparable harm and damage.

3 748. At all times relevant herein, Sham Defendants, through their agents, servants
4 and/or employees thereof, were acting within the scope of employment with the knowledge,
5 permission and consent of their employer(s) and/or manager(s). Therefore, employer(s) are
6 responsible and liable for all of its employee's negligent conduct set forth herein under the
7 theory of respondeat superior.

8 749. Upon information and belief, Sham Defendants employed onsite personnel and
9 corporate staff in remote offices, management and other supervisory personnel for the purpose of
10 supervising employees, and managing said properties, consistent with industry standards for
11 onsite property management of all books and records.

12 750. At all times material, the Sham Defendants were in control of, and responsible for
13 training, hiring, and/or screening employees working on the premises and in its corporate offices,
14 in a way designed to protect potential buyers, such as Counterclaimants from harm.

15 751. Sham Defendants, and each of them, known and unknown, breached their duty to
16 Counterclaimants in one or more of the following respects, but not limited to:

- 17 a. Failing to adequately supervise employees, agents, contractors and/or
18 subsidiaries.
- 19 b. Failing to adequately train employees, agents, contractors and/or subsidiaries.
- 20 c. Failing to adequately screen potential employees, agents, contractors and/or
21 subsidiaries before their hiring/contracting.
- 22 d. Failing to follow industry accepted standards for recordkeeping and reporting
23 financial information.

24 752. Sham Defendants breach of these duties directly and proximately caused
25 Counterclaimants' injuries.

26 753. At all times relevant herein, DOE Defendants, though their agents, servants and/or
27 employees thereof, were acting within the scope of employment with the knowledge, permission
28 and consent of their employer(s) and/or contractors. Therefore, employer(s) are responsible and

1 liable for all of their agent's negligent conduct set forth herein under the theory of respondeat
2 superior.

3 754. Counterclaimants have suffered injury and damages in an amount in excess of
4 \$15,000.00 subject to proof at trial.

5 755. That as a direct and proximate result of the Sham Defendant's negligent hiring
6 and negligent supervision and requirement that Counterclaimants assume the Loan Agreements
7 and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have
8 been damaged in an amount in a further amount to be determined at the time of trial and may be
9 liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or
10 any damages arising from Fannie Mae's related foreclosure proceedings.

11 **bb. TWENTY-EIGHTH CAUSE OF ACTION (INTENTIONAL**
12 **INTERFERENCE WITH CONTRACT AGAINST SHAM DEFENDANTS)**

13 756. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
14 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

15 757. Based on Counterclaimants' disclosures prior to closing of the Purchase
16 Agreements, the Sham Defendants knew Westland Real Estate Group is a privately held real
17 estate company with a sizable portfolio of properties, and approximately \$800 million in loans
18 outstanding.

19 758. Each of the loans that are part of that \$800 million loan portfolio is a written
20 contractual agreement. Upon information and belief, the Sham Defendants knew those contracts
21 and lending arrangements existed.

22 759. Further, the Sham Defendants knew that \$300 million of Counterclaimants' loans
23 are outstanding with Fannie Mae, and that it is economically advantageous for Counterclaimants
24 to have access to lender funds in order to refinance its properties.

25 760. The Sham Defendants committed intentional acts that it knew would actually or
26 that were intended or designed to result in a default on the loan assumed, which in turn would
27 disrupt the contractual loan agreements that Counterclaimants have with Fannie Mae, and
28 Counterclaimants' ability to refinance those loan agreements with Fannie Mae.

1 761. The Sham Defendants knew that by taking actions that were likely to lead to
2 Lenders claiming a purported default had occurred, Fannie Mae would blacklist
3 Counterclaimants by placing a “lending hold” on any future loan or borrow up, which would
4 have the effect of limiting, delaying, and/or disrupting Counterclaimants’ ability to refinance or
5 obtain any new loan with Fannie Mae.

6 762. The Sham Defendants made the misrepresentations to Counterclaimants knowing
7 it would likely lead Lenders to declare a default, despite that it knew it would cause disruption to
8 Westland’s business, and preclude it from obtaining favorable rates from one of only two
9 primary lenders in the multifamily housing loan market, and upon information and belief, the
10 Sham Defendants intended to cause harm to the contractual relationship between
11 Counterclaimants and Fannie Mae.

12 763. There was, and continues to be, actual disruption of the written loan agreements
13 that Counterclaimants have with Fannie Mae, as the Sham Defendant’s actions have in fact
14 resulted in Counterclaimants being placed on Fannie Mae’s blacklist, which has caused them
15 harm.

16 764. As a direct and proximate result of the Sham Defendants’ actions, Westland has
17 suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.

18 765. By reason of the foregoing, the Sham Defendants acted with oppression, fraud
19 and malice, and therefore, Counterclaimants are entitled to exemplary and punitive damages in
20 excess of \$15,000.

21 766. That as a direct and proximate result of the Sham Defendant’s intentional
22 interference with contracts and requirement that Counterclaimants assume the Loan Agreements
23 and guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have
24 been damaged in an amount in a further amount to be determined at the time of trial and may be
25 liable to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or
26 any damages arising from Fannie Mae’s related foreclosure proceedings.

27 767. By reason of the foregoing, the Sham Defendants knew that their actions would
28 cause Counterclaimants to be sued by Lenders due to the requirement that the loan be assumed

1 and as a result of their false financial statements, misrepresentations, and concealments, and
2 therefore each Westland entity has had to hire counsel to prosecute this matter by reason of
3 which it is entitled to reasonable attorney's fees as special damages.

4 **cc. TWENTY-NINTH CAUSE OF ACTION (CIVIL CONSPIRACY AGAINST**
5 **GRANDBRIDGE & SHAM DEFENDANTS)**

6 768. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
7 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

8 769. The Sham Defendants, by acting in concert, intended to accomplish the unlawful
9 objectives as set forth herein including, but not limited to breaching Westland's duty of good
10 faith and fair dealing, misrepresenting or concealing the true financial information related to the
11 Properties to Counterclaimants and/or Lenders, and improperly using relationships with DOE
12 Defendant and/or ROE Defendants at Pillar/SunTrust/Grandbridge to improperly obtain, pass
13 though credit underwriting, and obtain a release via the Assumption Agreement from the Loan
14 Agreements in an attempt to strip Westland of their substantive legal rights and remedies under
15 these documents including, but not limited to, those claims asserted herein against the Sham
16 Defendants, for breach of the Purchase Agreements.

17 770. Grandbridge, by acting in concert, intended to accomplish the unlawful objectives
18 as set forth herein including, but not limited to breaching Westland's duty of good faith and fair
19 dealing, misrepresenting or concealing the true terms of the Repair Reserve and Replacement
20 Reserve portions of the Loan Agreements, and improperly using relationships with the Sham
21 Defendants, DOE Defendants and/or ROE Defendants, as well as at Fannie Mae, to improperly
22 document and underwrite the Loan Agreements, reduce their own credit risk, and attempt to strip
23 Westland of their substantive legal rights and remedies under the Loan Agreements including,
24 but not limited to, those claims asserted herein against Grandbridge, for breach of the Loan
25 Agreements.

26 771. As a direct and proximate result of the Sham Defendant's actions,
27 Counterclaimants have sustained damages in excess of \$15,000.00, the exact amount of which
28 will be proven at trial.

1 772. By reason of the foregoing, the Sham Defendants and Grandbridge knew that
2 their actions would cause Counterclaimants to be sued by Fannie Mae due to the Sham
3 Defendant's requirement that the loan be assumed and as a result of their false statements,
4 misrepresentations, and concealments, and therefore each Westland entity has had to hire counsel
5 to prosecute this matter by reason of which it is entitled to reasonable attorney's fees as special
6 damages.

7 **dd. THIRTIETH CAUSE OF ACTION (UNJUST ENRICHMENT AGAINST**
8 **THE SHAM DEFENDANTS)**

9 773. Counterclaimants repeat, reallege, and incorporate the allegations set forth in the
10 preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

11 774. On or about August 29, 2018, Westland entered into two Purchase Agreements
12 applicable to the Liberty Property and the Square Property.

13 775. The Sham Defendants received the benefits of Counterclaimants' full
14 performance of the Purchase Agreements, including but not limited to the payment of
15 \$60,300,000 for the two Properties through the payment of cash and the assumption of loans the
16 Sham Defendants were obligated to satisfy.

17 776. The Sham Defendants accepted and retained the funds paid by Counterclaimants
18 pursuant to the Purchase Agreements.

19 777. The Sham Defendants failed to provide Properties in the condition represented at
20 the time of closing, because the Properties had a higher delinquency rate, lower occupancy rate,
21 and generated lower income than represented.

22 778. The Sham Defendants failed to provide Properties in the condition represented at
23 the time of closing, because the Sham Defendants failed to maintain the Properties consistent
24 with the exceptions to the "as-is" disclaimer for the Properties in that the Sham Defendants
25 improperly failed to maintain vacant units in rent ready condition or preform repairs that were
26 other than ordinary wear and tear.

1 779. The statements made by the Sham Defendants, regarding the quality of its tenants,
2 income that was being generated by the Properties, and the amount of repairs they would
3 perform prior to closing were either false or amounted to a mutual mistake by both parties.

4 780. Counterclaimants were later required to make those repairs, engage in a larger
5 number of evictions, and correct the deficiencies at the Properties at the expense of
6 Counterclaimants, when the Purchase Agreements contemplated that the Sham Defendants
7 would bear such costs.

8 781. In making those statements, especially after the terminated transaction in 2017,
9 the Sham Defendants knew that Westland would rely upon the quality of the tenant base and
10 condition of the Properties when entering into the Purchase Agreements, and intended for
11 Westland to do so, to ensure that the Property purchases would be completed with a higher than
12 justified purchase price, which unjustly enriched the Sham Defendants.

13 782. Westland did rely on the quality of the tenant base and condition of the Properties
14 when entering into the Purchase Agreements to their detriment and Westland justifiably relied
15 upon the information the Sham Defendants provided.

16 783. If the Sham Defendants would have disclosed the true financial condition of the
17 Properties, the true quality of the tenant base, and accurately represented the repairs it would
18 perform then Westland would have demanded that the Sham Defendants further reduce the
19 purchase price of the Properties, and/or other relief from the Sham Defendants, and without such
20 relief, would not have entered into the two Purchase Agreements.

21 784. Based on the foregoing, Westland is entitled to reimbursement in the amount of
22 the overstated purchase price that was paid.

23 785. That as a direct and proximate result of the Sham Defendant's actions underlying
24 their unjust enrichment and requirement that Counterclaimants assume the Loan Agreements and
25 guaranties, which the Sham Defendants were obligated to fulfill, Counterclaimants have been
26 damaged in an amount in a further amount to be determined at the time of trial and may be liable
27 to Counterclaimants for all or part of any claim that Fannie Mae has plead against them or any
28 damages arising from Fannie Mae's related foreclosure proceedings.

1 786. As a further direct and proximate result of the Sham Defendant's improper
2 conduct, Westland has had to hire counsel to prosecute this action and Counterclaimants are
3 entitled to reasonable attorney's fees and costs incurred herein.

4 **WHEREFORE,** Counterclaimants pray for judgment against Counter~~claim-~~
5 ~~D~~defendants, as follows:

- 6 1. For declaratory relief acknowledging that no default has occurred and that
7 Counter~~claim-~~Defendants Fannie Mae and Grandbridge improperly sought a
8 property condition assessment (as to Counterdefendants Fannie Mae and
9 Grandbridge only);
- 10 2. For injunctive relief, including without limitation, precluding any non-judicial
11 foreclosure against either the Liberty Property or the Square Property (as to
12 Counterdefendants Fannie Mae and Grandbridge only);
- 13 3. For equitable relief as demanded herein;
- 14 4. For compensatory damages and/or general damages in excess of \$15,000;
- 15 5. For punitive damages;
- 16 6. For prejudgment interest at the statutory rate;
- 17 7. For attorney's fees and costs of suit herein including as special damages for
18 conversion with those special damages as to Fannie Mae and Grandbridge, and as
19 to the Sham Defendants based on their knowledge that their actions would cause
20 Counterclaimants to be sued by Lenders; and
- 21 8. For such other relief as the Court deems appropriate.

22 Dated: August ~~31~~__, 20201

LAW OFFICES OF JOHN BENEDICT

/s/ John Benedict

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DICKINSON WRIGHT PLLC

/s/ John P. Desmond

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Attorneys for Defendants/Counterclaimants/~~Third~~
~~Party Plaintiffs~~ Westland Liberty Village, LLC &
Westland Village Square LLC, and Counterclaimants
Amusement Industry, Inc., Westland Corona LLC,
Westland Amber Ridge LLC, Westland Hacienda
Hills LLC, 1097 North State, LLC, Westland
Tropicana Royale LLC, Vellagio Apts of Westland
LLC, The Alevy Family Protection Trust, Westland
AMT, LLC, AFT Industry NV, LLC, A&D Dynasty
Trust

~~THIRD PARTY COMPLAINT~~

~~518.~~ ~~———— Defendants/Counterclaimants/Third Party Plaintiffs, Westland Liberty Village, LLC (“Liberty LLC”) and Westland Village Square, LLC (“Square LLC” and in combination with Liberty LLC, “Counterclaimants” or “Westland”), through their attorneys of record, the Law Offices of John Benedict, for their Third Party Complaint against Grandbridge Real Estate Capital, LLC (formerly Cohen Financial, Suntrust Bank, and Truist Bank, but for ease of reference, regardless of the time period, it shall be referred to solely as “Grandbridge” or “Servicer”)¹⁵ hereby incorporate in full all allegations contained in Section I, Statement of Case, Section II, Parties, and Section III, Facts Common to all Causes of Action, as asserted above in the Counterclaim, and assert the following causes of action against Grandbridge as follows and maintaining the numbering from the Counterclaim for ease of reference:~~

~~————¹~~

~~V. CLAIMS FOR RELIEF~~

~~a. FIRST CAUSE OF ACTION (FOR BREACH OF CONTRACT—LIBERTY LOAN—BY WESTLAND LIBERTY VILLAGE, LLC)~~

~~557.~~ ~~Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

~~558.~~ ~~A valid assumption agreement was entered into between Liberty LLC, on the one hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the Assumption and Release Agreement.~~

~~559.~~ ~~The assumption agreement utilized the general provisions of the Multifamily Loan and Security Agreement entered into between Liberty LLC’s predecessor on the one hand, and Fannie Mae and Grandbridge on the other hand, to specify the terms that would govern the parties’ practices for administration of the loan.~~

¹⁵ ~~While the Servicer has had multiple name changes, including based on a merger with BB&T Bank, the employees “servicing” this loan have continuously remained the same regardless of the name of the entity.~~

1 ~~560. Upon information and belief, Grandbridge assigned its interests in a portion of the~~
2 ~~Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer~~
3 ~~on either the loan agreement or a portion of the agreements that were signed by Liberty LLC's~~
4 ~~predecessor, which obligations were assumed by Liberty LLC.~~

5 ~~561. Separately, Grandbridge signed the closing statement, which conveyed its 1%~~
6 ~~loan assumption fee as "Lender."~~

7 ~~562. Grandbridge signed the Liberty Loan agreements, and the assumption agreement~~
8 ~~with Westland, both on its own behalf and on behalf of Fannie Mae.~~

9 ~~563. Liberty LLC has performed all of the duties and obligations required of it under~~
10 ~~the terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic~~
11 ~~loan payment and paying the 1% loan assumption fee.~~

12 ~~564. Liberty LLC has performed all of the duties and obligations required of it under~~
13 ~~the terms of the terms of the Loan Agreement with Grandbridge, including timely making~~
14 ~~monthly periodic loan payment and paying the 1% loan assumption fee.~~

15 ~~565. To the extent that any duties or obligations required of Westland have not been~~
16 ~~performed, such duties or obligations have been excused because of Grandbridge's and Fannie~~
17 ~~Mae's non-performance of the Agreement.~~

18 ~~566. Grandbridge has materially breached its agreement with Liberty LLC by failing to~~
19 ~~require adequate reserves at the time of the initial loan, requesting and performing an improper~~
20 ~~property condition assessment, utilizing that improper PCA to demand and adjustment to reserve~~
21 ~~deposits, failing to disburse funds in response to reserve disbursement requests, sending/filing~~
22 ~~improper notices, and generally violating the terms of the Multifamily Loan and Security~~
23 ~~Agreement to the point that the administration has become so one-sided that Liberty LLC had no~~
24 ~~option but to commence these proceedings.~~

25 ~~567. That as a direct and proximate result of Grandbridge's breach of contract, Liberty~~
26 ~~LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be~~
27 ~~determined at trial.~~

1 ~~568. That it has been necessary for Liberty LLC to retain counsel to prosecute this~~
2 ~~action by reason of which it is entitled to reasonable attorney's fees.~~

3 ~~**b. SECOND CAUSE OF ACTION (BREACH OF CONTRACT — SQUARE**~~
4 ~~**LOAN BY WESTLAND VILLAGE SQUARE, LLC)**~~

5 ~~569. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
6 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

7 ~~570. A valid assumption agreement was entered into between Square LLC, on the one~~
8 ~~hand, and Fannie Mae and Grandbridge on the other hand, on August 29, 2018, specifically the~~
9 ~~Assumption and Release Agreement.~~

10 ~~571. The assumption agreement utilized the general provisions of the Multifamily~~
11 ~~Loan and Security Agreement entered into between Liberty Square LLC's predecessor on the~~
12 ~~one hand, and Fannie Mae and Grandbridge on the other hand, to specify the terms that would~~
13 ~~govern the parties' practices for administration of the loan.~~

14 ~~572. Upon information and belief, Grandbridge assigned its interests in a portion of the~~
15 ~~Multifamily Loan and Security Agreement to Fannie Mae, but continued as Lender and Servicer~~
16 ~~on either the loan agreement or a portion of the agreements that were signed by Square LLC's~~
17 ~~predecessor, which obligations were assumed by Square LLC.~~

18 ~~573. Separately, Grandbridge signed the closing statement, which conveyed its 1%~~
19 ~~loan assumption fee as "Lender."~~

20 ~~574. Grandbridge signed the Square Loan agreements, and the assumption agreement~~
21 ~~with Westland, both on its own behalf and on behalf of Fannie Mae.~~

22 ~~575. Square LLC has performed all of the duties and obligations required of it under~~
23 ~~the terms of the Loan Agreement with Fannie Mae, including timely making monthly periodic~~
24 ~~loan payment and paying the 1% loan assumption fee.~~

25 ~~576. Square LLC has performed all of the duties and obligations required of it under~~
26 ~~the terms of the terms of the Loan Agreement with Grandbridge, including timely making~~
27 ~~monthly periodic loan payment and paying the 1% loan assumption fee.~~

28

1 ~~577. To the extent that any duties or obligations required of Westland have not been~~
2 ~~performed, such duties or obligations have been excused because of Grandbridge's and Fannie~~
3 ~~Mae's non-performance of the Agreement.~~

4 ~~578. Grandbridge has materially breached its agreement with Square LLC by failing to~~
5 ~~require adequate reserves at the time of the initial loan, requesting and performing an improper~~
6 ~~property condition assessment, utilizing that improper PCA to demand and adjustment to reserve~~
7 ~~deposits, failing to disburse funds in response to reserve disbursement requests, sending/filing~~
8 ~~improper notices, and generally violating the terms of the Multifamily Loan and Security~~
9 ~~Agreement to the point that the administration has become so one-sided that Square LLC had no~~
10 ~~option but to commence these proceedings.~~

11 ~~579. That as a direct and proximate result of Grandbridge's breach of contract, Square~~
12 ~~LLC has been damaged in an amount in excess of \$15,000.00, the exact amount of which will be~~
13 ~~determined at trial.~~

14 ~~580. That it has been necessary for Square LLC to retain counsel to prosecute this~~
15 ~~action by reason of which it is entitled to reasonable attorney's fees.~~

16 ~~**c. THIRD CAUSE OF ACTION (BREACH OF COVENANT OF GOOD**~~
17 ~~**FAITH AND FAIR DEALING BY BOTH THIRD PARTY PLAINTIFFS)**~~

18 ~~581. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
19 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

20 ~~582. A valid and binding agreement was formed between Westland and Fannie~~
21 ~~Mae/Grandbridge on each of the two separate sets of loan agreements.~~

22 ~~583. Westland's agreements utilized the general provisions of the underlying loan~~
23 ~~agreement entered into between Westland's predecessor and Fannie Mae/Grandbridge to specify~~
24 ~~the terms that would govern the parties' practices for administration of the loan.~~

25 ~~584. In every contract, including the loans between Westland and Fannie~~
26 ~~Mae/Grandbridge, there exists in law an implied covenant of good faith and fair dealing.~~

27 ~~585. Both prior to the loan assumption and after, Westland acted in good faith by~~
28 ~~paying Fannie Mae/Grandbridge a 1% loan assumption fee under each agreement, providing~~

1 ~~Fannie Mae/Grandbridge access to both the Liberty Property and the Square Property, paying for~~
2 ~~substantial improvements at each of the Properties, improving the condition of each of the~~
3 ~~Properties and their tenant base, providing confidential business documents to Fannie~~
4 ~~Mae/Grandbridge, and continuously paying Westland's full loan payments on a timely basis~~
5 ~~even after Fannie Mae/Grandbridge suspended the automatic ACH payments the parties had used~~
6 ~~without prior notice.~~

7 ~~586. Grandbridge wrongfully and deliberately took advantage of Westland's good faith~~
8 ~~actions, by, *inter alia*, failing to perform all conditions, covenants and promises required under~~
9 ~~the Loan Agreements, including without limitation, altering the standard that they would apply to~~
10 ~~a property condition assessment undertaken in July 2019 from the standard used at the time the~~
11 ~~loan was assumed, telling Westland that they would cover the cost of the July 2019 property~~
12 ~~condition assessments but then refusing to discuss the purported default unless Westland paid~~
13 ~~those costs, making a demand that Westland deposit an additional \$2,706,150.00 into escrow~~
14 ~~despite that the condition of its Properties had improved not deteriorated since the assumption~~
15 ~~agreement was signed, and by each of these actions Grandbridge and Fannie Mae thereby~~
16 ~~breached the implied covenant of good faith and fair dealing inherent in the subject agreement.~~

17 ~~587. Grandbridge's actions were taken both on its own behalf as a Lender and/or~~
18 ~~Servicer.~~

19 ~~588. Wherefore Grandbridge did not act in good faith, that is, did not perform its~~
20 ~~contract with each Third Party Plaintiff in the manner reasonably contemplated by the parties, so~~
21 ~~that each Third Party Plaintiff has a remedy that goes beyond that of breach of the express terms~~
22 ~~of their contract.~~

23 ~~589. Grandbridge's actions, misrepresentations, deception, concealment, and breach of~~
24 ~~the covenant of good faith and fair dealing were done intentionally with malice for the specific~~
25 ~~purpose of causing injury to Liberty LLC and Square LLC.~~

26 ~~590. As a direct and proximate result of Grandbridge's breach, each Third Party~~
27 ~~Plaintiff has suffered damages in excess of \$15,000.00, the exact amount of which will be proven~~
28 ~~at trial.~~

1 ~~591. As a further direct and proximate result of Grandbridge's breach, each Third Party~~
2 ~~Plaintiff has had to hire counsel to prosecute this matter by reason of which it is entitled to~~
3 ~~reasonable attorney's fees.~~

4 ~~**d. FOURTH CAUSE OF ACTION (DECLARATORY RELIEF)**~~

5 ~~592. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
6 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

7 ~~593. A genuine justiciable controversy exists relevant to the rights and obligations~~
8 ~~herein regarding Westland's obligations under each of the Loan Agreements, and whether~~
9 ~~Grandbridge may demand that Westland deposit additional funds into reserve accounts.~~

10 ~~594. The interests of Third Party Plaintiffs, on the one hand, and Grandbridge on the~~
11 ~~other are adverse.~~

12 ~~595. Specifically, the present dispute that resulted in a Notice of Default and Election~~
13 ~~to Sell being sent by Fannie Mae is a dispute over the parties' interpretation of Article 13.02 of~~
14 ~~the Loan Agreement related to adjustments to reserve funding and the related reserve~~
15 ~~administration requirements, as well as Article 6.03 related to the conditions when property~~
16 ~~condition assessments may be utilized.~~

17 ~~596. Westland has a legally protectable interest in the two Properties.~~

18 ~~597. These issues are ripe for judicial determination, because on or about October 18,~~
19 ~~2019, Grandbridge served a Notice of Demand, both as Servicer/Lender, and/or on behalf of~~
20 ~~Fannie Mae.~~

21 ~~598. These issues are ripe for judicial determination, because on or about July 15,~~
22 ~~2020, Fannie Mae served Westland with a Notice of Default and Intent to Sell Westland's~~
23 ~~Properties.~~

24 ~~599. These issues are ripe for judicial determination, because on or about August 12,~~
25 ~~2020, Fannie Mae filed a complaint seeking the appointment of a receiver to ouster Westland~~
26 ~~from its Properties.~~

27 ~~600. Westland seeks an order from this Court declaring that Article 13.02 and Article~~
28 ~~6.03 are only implicated if the condition of the Properties has physically deteriorated, or~~

1 ~~impaired the value of Fannie Mae's and Grandbridge's security, and that no additional reserve~~
2 ~~deposit is needed.~~

3 ~~601. Westland seeks an order from this Court declaring that Fannie Mae and/or~~
4 ~~Grandbridge breached the terms of the two Loan Agreements by demanding a property condition~~
5 ~~assessment, demanding the adjustment of reserve deposits without any proper basis, and filing a~~
6 ~~NOD.~~

7 ~~602. That it has been necessary for Westland to retain the services of legal counsel for~~
8 ~~which Westland is entitled to recover such costs and expenses from Grandbridge.~~

9 ~~**c. FIFTH CAUSE OF ACTION (FRAUD IN THE INDUCEMENT)**~~

10 ~~603. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
11 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

12 ~~604. That Westland entered into its Loan Agreement relying on Fannie Mae and~~
13 ~~Grandbridge continuing to utilize the same standard for evaluating the condition of the Properties~~
14 ~~that had been used at the origination of the Loan Agreements during late 2017, and at the time of~~
15 ~~the loan assumption during the summer of 2018.~~

16 ~~605. When Grandbridge forwarded documents regarding the loan assumption and loan~~
17 ~~agreements to Westland, it did so not only on its own behalf, but also on behalf of Fannie Mae,~~
18 ~~who advised Grandbridge to forward those documents to Westland with the intent that Westland~~
19 ~~would be provided the loan assumption, loan agreements, and reserve schedules, and that~~
20 ~~Westland would rely on those documents.~~

21 ~~606. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and~~
22 ~~Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed~~
23 ~~Borrower's [Liberty LLC's] financial and managerial capacity, the Assumption has been~~
24 ~~approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or~~
25 ~~established schedule identified on Exhibit B attached hereto; No Change to the Required Repair~~
26 ~~Reserve of \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.)~~
27 ~~Further, Exhibit C, Required Reserve Schedule, listed all items as completed, except for a~~

1 ~~\$9,375.00 holdback for “Misc. Concrete and Fence Repairs. Sports Court Resurfacing” that was~~
2 ~~shown as having already been fully funded. (Exhibit J, at 7.)~~

3 ~~607. Further, by letter dated August 20, 2018, Grandbridge represented on behalf of~~
4 ~~itself and Fannie Mae to Square LLC that, “after a thorough review and analysis of the Proposed~~
5 ~~Borrower’s [Square LLC’s] financial and managerial capacity, the Assumption has been~~
6 ~~approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or~~
7 ~~established schedule identified on Exhibit B attached hereto . . .” (“(Exhibit K.) Further,~~
8 ~~Exhibit C, Required Repair Reserve Schedule, simply stated “N/A” indicating that no repair~~
9 ~~reserve was required for that loan. (Exhibit K, at 7.)~~

10 ~~608. Grandbridge knew that Westland relied upon the amounts and types of conditions~~
11 ~~requiring reserve deposits when entering into the Loan Agreements.~~

12 ~~609. Grandbridge did not inform Westland that they planned to seek additional~~
13 ~~reserves in order to induce Westland to consent to the Loan Agreements, to collect the loan~~
14 ~~assumption fee from Westland, for Grandbridge to improve its own liquidity position with~~
15 ~~Fannie Mae, to improve the creditworthiness of Fannie Mae’s loan portfolio, to attempt to~~
16 ~~improperly generate additional fees and costs, and to improperly profit off of holding Westland’s~~
17 ~~funds in a non-interest bearing escrow account.~~

18 ~~610. That Fannie Mae does credit reviews and monitoring of Grandbridge’s lending~~
19 ~~practices, and upon information and belief, that Fannie Mae determined that Grandbridge failed~~
20 ~~to follow Fannie Mae’s credit and underwriting criteria for loans in underwriting the November~~
21 ~~2017 loan.~~

22 ~~611. Upon information and belief, that Fannie Mae required that Grandbridge obtain~~
23 ~~additional security due to its poor underwriting, and thus Grandbridge had no intent to service~~
24 ~~the Loan Agreements consistent with the documentation that was provided at the time of the~~
25 ~~August 2018 loan assumption.~~

26 ~~612. That had Westland known that Fannie Mae and Grandbridge would require an~~
27 ~~additional deposit of over \$2.7 million of additional reserve funding based on a loan balance of~~
28 ~~approximately \$38.6 million, which amounts to approximately 7% of the loan amount, for a loan~~

1 with a seven year term, Counterclaimants would not have entered into the assumption agreement
2 and would have obtained alternative financing.

3 613. Westland reasonably relied upon the types of expenses contained in the repair and
4 replacement escrow accounts schedules, because Westland has entered into numerous loan
5 agreements previously, but on those loan agreements, the lender never requested any significant
6 adjusted reserve deposits.

7 614. Westland relied on Fannie Mae's material misstatements and omissions by paying
8 a 1% loan assumption fee, providing Fannie Mae access to the Property, paying for substantial
9 improvements at the Property, improving the condition of the Property and its tenant base,
10 providing Fannie Mae confidential business documents, and continuously paying loan payments.

11 615. As a result of Grandbridge's misrepresentations, Westland was induced to enter
12 into the assumption agreement with Fannie Mae as lender and Grandbridge as servicer, which
13 has damaged Westland.

14 616. As a direct and proximate result of Grandbridge's misstatements and omissions,
15 Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be
16 proven at trial, because, *inter alia*, this is the only default that Westland has ever suffered, it will
17 impair Westland's credit rating leading to long term higher borrowing costs, and it has impaired
18 Westland's ability to re-finance its Properties at a time when interest rates are at an all time low.

19 617. By reason of the foregoing, Grandbridge acted with oppression, fraud and malice,
20 and therefore, Westland is entitled to exemplary and punitive damages.

21 **~~f. SIXTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION~~**
22 **~~AND CONCEALMENT)~~**

23 618. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in
24 the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.

25 619. Grandbridge supplied information and made material misrepresentations to
26 Westland, including without limitation, as detailed above that adequate reserve amounts had
27 already been submitted, consistent with the schedules attached to the loan assumption letters and
28 documentation.

1 ~~620. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and~~
2 ~~Fannie Mae to Westland that, it conducted “a thorough review and analysis of the Proposed~~
3 ~~Borrower’s financial and managerial capacity” before approving the assumption.~~

4 ~~621. Upon information and belief, Grandbridge negligently misrepresented that it~~
5 ~~conducted an adequate review when setting the reserve amounts in August 2018, prior to~~
6 ~~Westland signing the loan assumption, because a short one (1) year later, it requested an~~
7 ~~additional \$2.7 million be placed into escrow with no deterioration of the Properties.~~

8 ~~622. The information and representations made by Grandbridge was false, in that~~
9 ~~unknownst to Westland they knew the loan did not have sufficient security, and that there was~~
10 ~~a substantial likelihood they would attempt to seek additional reserves.~~

11 ~~623. Grandbridge supplied the information and made the representations to induce~~
12 ~~Westland to rely upon it, to act or refrain from acting in reliance upon it, and to have Westland~~
13 ~~enter into the assumption agreement.~~

14 ~~624. Grandbridge owed Westland a duty not to make material misrepresentations.~~

15 ~~625. Westland justifiably relied upon the information Grandbridge provided.~~

16 ~~626. As a direct and proximate result of Grandbridge’s misstatements and omissions,~~
17 ~~Westland has suffered damages in excess of \$15,000.00, the exact amount of which will be~~
18 ~~proven at trial, because, *inter alia*, this is the only default that Westland has ever suffered and it~~
19 ~~will impair Westland’s credit rating and leading to long term higher borrowing costs, and it has~~
20 ~~impaired Westland’s ability to re-finance its Properties at a time when interest rates are at an all-~~
21 ~~time low.~~

22 ~~**g. SEVENTH CAUSE OF ACTION (INTENTIONAL INTERFERENCE**~~
23 ~~**WITH CONTRACT)**~~

24 ~~627. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
25 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

26 ~~628. To the extent that Grandbridge is not found to be a party to the assumption~~
27 ~~agreements and/or the loan agreements, this cause of action is pleaded in the alternative against it~~
28 ~~by both Third Party Plaintiffs.~~

1 ~~629. Based on Westland's financial disclosures at the time of the loan assumption;~~
2 ~~Grandbridge knew Westland Real Estate Group is a privately held real estate company with a~~
3 ~~sizable portfolio of properties, and approximately \$800 million in loans outstanding.~~

4 ~~630. Each of the loans underlying that are part of that \$800 million loan portfolio is a~~
5 ~~written contractual agreement. Upon information and belief, Grandbridge knows these contracts~~
6 ~~and lending arrangements exist.~~

7 ~~631. Further, Grandbridge knew that \$300 million of Westland's loans are outstanding~~
8 ~~with Fannie Mae, and that it is economically advantageous for Westland to have access to lender~~
9 ~~funds in order to refinance its properties.~~

10 ~~632. Grandbridge committed intentional acts intended or designed to disrupt the~~
11 ~~contractual loan agreements that Westland has with Fannie Mae, and Westland's ability to~~
12 ~~refinance those loan agreements with Fannie Mae.~~

13 ~~633. Grandbridge knew that by manufacturing the purported default, Fannie Mae~~
14 ~~would blacklist Westland, by placing a "lending hold" on any Westland loan, which would have~~
15 ~~the effect of limiting, delaying, and/or disrupting Westland's ability to refinance a loan with~~
16 ~~Fannie Mae.~~

17 ~~634. Grandbridge manufactured the Default in an attempt to put financial pressure on~~
18 ~~Westland, despite that it knew it would cause disruption to Westland's business, and preclude it~~
19 ~~from obtaining favorable rates from one of only two primary lenders in the multifamily housing~~
20 ~~loan market, and upon information and belief, Grandbridge intended to cause harm to the~~
21 ~~contractual relationship between Westland and Fannie Mae.~~

22 ~~635. There was, and continues to be, actual disruption of the written loan agreements~~
23 ~~that Westland has with Fannie Mae, as Grandbridge's actions have in fact resulted in Westland~~
24 ~~being placed on Fannie Mae's blacklist, which has caused Westland harm.~~

25 ~~636. As a direct and proximate result of Fannie Mae's breach, Westland has suffered~~
26 ~~damages in excess of \$15,000.00, the exact amount of which will be proven at trial.~~

27 ~~637. By reason of the foregoing, Grandbridge acted with oppression, fraud and malice,~~
28 ~~and therefore, Westland is entitled to exemplary and punitive damages in excess of \$15,000.~~

1 **~~h. EIGHTH CAUSE OF ACTION (CONVERSION)~~**

2 ~~638. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
3 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

4 ~~639. Westland has submitted several prior reserve reimbursement requests that went~~
5 ~~unanswered by Grandbridge, including before its November 2019 demand for additional reserve~~
6 ~~funding.~~

7 ~~640. Westland and its predecessor submitted funds related to two fire insurance claims~~
8 ~~to Grandbridge, which earmarked funds were to be held in escrow until the two fire-damaged~~
9 ~~building were rebuilt.~~

10 ~~641. The fire-damaged buildings were completely rebuilt with Westland's funds.~~

11 ~~642. Westland has submitted reserve disbursement requests for the release of those~~
12 ~~funds, and other reserve disbursement requests for work that was completed, each of which was~~
13 ~~accompanied by invoices, proof of payment, and documentation showing approval of all required~~
14 ~~permits, but Grandbridge has failed to respond to those requests.~~

15 ~~643. As such, Grandbridge has wrongfully exerted dominion over Westland's personal~~
16 ~~property, including, without limitation, the funds that Grandbridge is holding in reserve accounts,~~
17 ~~that were earmarked for reconstruction of two fire-damaged buildings at the Liberty Property, and~~
18 ~~Grandbridge has thereby wrongly converted the funds to their own use and benefit. Grandbridge's~~
19 ~~continued dominion over Westland's personal property was unauthorized and inconsistent with~~
20 ~~Westland's property rights.~~

21 ~~644. Grandbridge's dominion over Westland's personal property deprived Westland of~~
22 ~~all of their property rights relating thereto.~~

23 ~~645. Grandbridge's acts constitute conversion.~~

24 ~~646. As a direct and proximate result of Grandbridge's conversion, Westland has~~
25 ~~suffered damages in excess of \$15,000.00, the exact amount of which will be proven at trial.~~

26 ~~647. Further, due to the wanton, malicious, and intentional conduct of Grandbridge,~~
27 ~~Westland is entitled to an award of exemplary and punitive damages against Grandbridge.~~

1 ~~648. Grandview knew that by refusing to return the converted proceeds after just~~
2 ~~demand, Borrowers would have to hire counsel to have those funds returned. Thus, it was~~
3 ~~foreseeable that Borrowers would incur attorney's fees as special damages. Borrowers have~~
4 ~~incurred these fees and request same as part of their special damages for conversion.~~

5 ~~**i. NINTH CAUSE OF ACTION (INJUNCTIVE RELIEF)**~~

6 ~~649. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
7 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

8 ~~650. On or about July 15, 2020, two NODs that were filed against the Liberty Property~~
9 ~~and the Square Property and served on Westland.~~

10 ~~651. Upon information and belief, in Nevada, the typical period for a foreclosure sale~~
11 ~~to occur after a borrower receives a NOD is 120 days.~~

12 ~~652. As Westland has made all debt service payments, and complied with the terms of~~
13 ~~the Loan Agreements, the Properties rightfully belong to Westland.~~

14 ~~653. Fannie Mae and Grandbridge are attempting to utilize Nevada's non-judicial~~
15 ~~foreclosure process to improperly seize and sell Westland's Liberty Property and Square~~
16 ~~Property.~~

17 ~~654. Real property is a unique asset, and on that basis, in the event that a wrongful~~
18 ~~foreclosure sale occurs, Westland will suffer extreme hardship and actual and impending~~
19 ~~irreparable loss and damage.~~

20 ~~655. Westland has no adequate or speedy remedy at law to prevent the sale of the~~
21 ~~Properties, and injunctive relief is therefore Westland's only means for securing relief.~~

22 ~~656. Westland is likely to succeed in this lawsuit on the merits of its claims.~~

23 ~~657. Based on the foregoing, Westland is entitled to temporary restraining orders and~~
24 ~~preliminary and permanent injunctive relief to preserve the status quo, to mitigate its damages,~~
25 ~~and to prevent further irreparable injury to Westland, including, without limitation by: (a)~~
26 ~~enjoining Fannie Mae and/or Grandbridge from any further attempts to foreclose on the~~
27 ~~Properties related to their baseless requests to adjust the reserve deposits, and (b) enjoining~~
28 ~~Fannie Mae and/or Grandbridge from any further attempts to coerce Westland into providing~~

1 ~~additional reserves or to pay for the expenses related to the default that Grandbridge~~
2 ~~manufactured.~~

3 ~~658. As a further direct and proximate result of Fannie Mae's and/or Grandbridge's~~
4 ~~improper demands to adjust reserves, their filing of the NOD, and the filing of their Complaint~~
5 ~~seeking appointment of a receiver, Westland has had to hire counsel to prosecute this matter by~~
6 ~~reason of which it is entitled to reasonable attorney's fees.~~

7 ~~**j. TENTH CAUSE OF ACTION (EQUITABLE RELIEF/RESCISSION/**~~
8 ~~**REFORMATION)**~~

9 ~~659. Third Party Plaintiffs repeat, reallege, and incorporate the allegations set forth in~~
10 ~~the preceding paragraphs, including in the Counterclaim above, as if fully set forth herein.~~

11 ~~660. On or about August 29, 2018, Westland entered into two assumption agreements~~
12 ~~for the loans applicable to the Liberty Property and the Square Property.~~

13 ~~661. Prior to signing the assumption, Grandbridge individually, and on behalf of~~
14 ~~Fannie Mae, forwarded Westland a loan assumption agreement letter, which contained the terms~~
15 ~~under which it would permit Westland's assumption of the Liberty Loan and Square Loan.~~

16 ~~662. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and~~
17 ~~Fannie Mae to Liberty LLC that, "after a thorough review and analysis of the Proposed~~
18 ~~Borrower's [Liberty LLC's] financial and managerial capacity, the Assumption has been~~
19 ~~approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or~~
20 ~~established schedule identified on Exhibit B attached hereto; No Change to the Required Repair~~
21 ~~Reserve of \$39,375.00 as identified in schedule on Exhibit C attached hereto . . ." (Exhibit J.)~~
22 ~~Further, Exhibit C, Required Reserve Schedule, listed all items as completed, except for a~~
23 ~~\$9,375.00 holdback for "Misc. Concrete and Fence Repairs. Sports Court Resurfacing" that was~~
24 ~~shown as having already been fully funded. (Exhibit J, at 7.)~~

25 ~~663. By letter dated August 20, 2018, Grandbridge represented on behalf of itself and~~
26 ~~Fannie Mae to Square LLC that, "after a thorough review and analysis of the Proposed~~
27 ~~Borrower's [Square LLC's] financial and managerial capacity, the Assumption has been~~
28 ~~approved on the following terms: . . . No change to the Replacement Reserve monthly deposit or~~

1 ~~established schedule identified on Exhibit B attached hereto . . .” (“Exhibit K.) Further,~~
2 ~~Exhibit C, Required Repair Reserve Schedule, simply stated “N/A” indicating that no repair~~
3 ~~reserve was required for that loan. (Exhibit K, at 7.)~~

4 ~~664. When the loan assumption agreements were signed, the above-referenced~~
5 ~~Required Repair Reserve Schedule and Required Replacement Reserve Schedule, for each~~
6 ~~Property, were specifically included as part of the assumption agreement.~~

7 ~~665. The statements made by Grandbridge, on behalf of itself and on behalf of Fannie~~
8 ~~Mae, were either false or amounted to a mutual mistake by both parties, because Grandbridge~~
9 ~~and Fannie Mae later attempted to obtain additional reserve payments in excess of the schedules~~
10 ~~that were provided to Westland, and those requests for additional reserve deposits included~~
11 ~~requests to deposit \$2.7 million of funds related to physical conditions that were not of the same~~
12 ~~type or category as the expenses included in the schedules.~~

13 ~~666. In making those statements, Fannie Mae and Grandbridge knew that Westland~~
14 ~~would rely upon the amounts and types of conditions requiring reserve deposits when entering~~
15 ~~into the Loan Agreements, and intended for Westland to do so, to ensure that the loans would~~
16 ~~close.~~

17 ~~667. Westland did rely on the amounts and types of conditions requiring reserve~~
18 ~~deposits that were listed in the schedules attached to the loan assumption letters, and as such~~
19 ~~Westland justifiably relied upon the information Grandbridge and Fannie Mae provided.~~

20 ~~668. If Grandbridge or Fannie Mae would have had f3 or another inspection company~~
21 ~~perform a PCA as thorough and with the same criteria before the assumption as it did a year~~
22 ~~later, and told Westland that an additional reserve deposit would be required, then Westland~~
23 ~~would have demanded that the Shamrock Entities met the additional reserve funding requirement~~
24 ~~prior to agreeing to assume the loan, that the terms of the purchase and/or loan assumption be~~
25 ~~amended, and/or other relief from the Shamrock Entities, Fannie Mae and/or Grandbridge, and~~
26 ~~without such relief, would not have entered into the two assumption agreements.~~

27 ~~669. As such, to the extent that that a finding is made that the loan agreements would~~
28 ~~permit Grandbridge and Fannie Mae to demand additional reserve deposits, then the loan~~

documents should be reformed consistent with the statements contained in the loan assumption letters and its attached reserve schedules due to irregularities in assumption process amounting to fraud, unfairness or oppression, and if not reformed, other appropriate equitable relief to rectify the inequities and unfairness of this situation, and if not, then rescinded altogether.

670. Based on the foregoing, Westland is entitled to reformation, other equitable relief, or rescission of the loan agreements consistent with Grandbridge's and Fannie Mae's statements that no additional reserve deposits were required for the loans.

As a further direct and proximate result of Fannie Mae's and/or Grandbridge's improper demands to adjust reserves and related actions, Westland has had to hire counsel to prosecute this matter and obtain reformation of the loan documents by reason of which it is entitled to reasonable attorney's fees or that they had concealed material adverse information, Plaintiffs would actually or Third Plaintiffs' occurred **NINETEENTH** WHEREFORE, Third Party Plaintiffs pray for judgment against Third Party Defendants, as follows:

1. For declaratory relief acknowledging that no default has occurred and that Third Party Defendant improperly sought a property condition assessment;
2. For injunctive relief, including without limitation, precluding any non-judicial foreclosure against either the Liberty Property or the Square Property;
3. For equitable relief as demanded herein;
4. For compensatory damages in excess of \$15,000;
5. For punitive damages;
6. For prejudgment interest at the statutory rate;
7. For attorney's fees and costs of suit, including as special damages for conversion and
8. For such other relief as the Court deems appropriate. Dated: August 31, 2020

LAW OFFICES OF JOHN BENEDICT

/s/ John Benedict

John Benedict (NV Bar No. 5581)

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~~Village, LLC & Westland Village Square LLC~~

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