

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>WOODBIDGE GROUP OF COMPANIES, LLC, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: right;">Remaining Debtors.</p>	<p>Chapter 11</p> <p>Case No. 17-12560 (BLS)</p> <p>(Jointly Administered)</p>
<p>MICHAEL GOLDBERG, in his capacity as Liquidating Trustee of the WOODBRIDGE LIQUIDATION TRUST,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DANIEL P. ORFIN,</p> <p style="text-align: right;">Defendant.</p>	<p>Adversary Proceeding Case No. 19-51005 (BLS)</p>

**ANSWER TO ADVERSARY COMPLAINT OBJECTING TO CLAIMS AND  
COUNTERCLAIMING FOR AVOIDANCE AND RECOVERY OF AVOIDABLE  
TRANSFERS, FOR EQUITABLE SUBORDINATION, FOR SALE OF UNREGISTERED  
SECURITIES, FRAUD, AND FOR AIDING AND ABETTING FRAUD**

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<sup>1</sup> The Remaining Debtors and the last four digits of their respective federal tax identification numbers are as follows: Woodbridge Group of Companies, LLC (3603) and Woodbridge Mortgage Investment Fund 1, LLC (0172).

Defendant Daniel P. Orfin (hereafter “Defendant” or “Orfin”), by and through the undersigned counsel, hereby responds to the Complaint Objecting to Claims and Counterclaiming for Avoidance and Recovery of Avoidable Transfers, for Equitable Subordination, for Sale of Unregistered Securities, Fraud, and for Aiding and Abetting Fraud (the “Complaint”) filed by Michael Goldberg in his capacity as Liquidating Trustee for the Woodbridge Liquidating Trust (“Plaintiff”) as follows.

**NATURE OF THE ACTION**

1. Beginning no later than July 2012 through December 1, 2017, Woodbridge Group of Companies, LLC and its 305 debtor affiliates (collectively, the “Debtors”) were operated by their founder and principal, Robert Shapiro (“Shapiro”), as a Ponzi scheme. As part of this fraud, Shapiro and his lieutenants utilized the Debtors to raise over one billion dollars from approximately 10,000 investors nationwide as either Noteholders or Unitholders (collectively, “Investors”).

**ANSWER: In response to Paragraph 1, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

2. Those Investors, many of whom were elderly, often placed a substantial percentage of their net worth (including savings and retirement accounts) with the Debtors and now stand to lose a significant portion of their investments and to be delayed in the return of the remaining portion. The quality of the Investors’ lives will likely be substantially and adversely affected by the fraud perpetrated by Shapiro and his lieutenants.

**ANSWER: In response to Paragraph 2, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

3. The purpose of this lawsuit is (i) to object to the Claims (defined below) so that Defendant is not further compensated at the expense of legitimate creditors for activities that advanced the Ponzi scheme and further drove the Debtors into insolvency, and to the extent the Claim, or any new or amended claims, survive, to equitably subordinate them, (ii) to avoid and recover monies previously paid to Defendant by reason of these activities, on the grounds that such payments were actually fraudulent and/or constructively fraudulent; and (iii) to hold Defendant liable for sale of unregistered securities, for fraud, and for aiding and abetting fraud.

**ANSWER: In response to Paragraph 3, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this action under 28 U.S.C. §§ 157(a) and 1334. Counts I, II, III, IV, V, and VI of this adversary proceeding are core within the meaning of 28 U.S.C. § 157(b)(2)(B), (C), (F), and (H). Counts VII, VIII, and IX are non-core. Plaintiff consents to entry of final orders or judgment by this Court on all counts.

**ANSWER: Defendant admits that proceedings to, among other things, determine, avoid or recover transfers pursuant to §§ 544, 548 and 550 of the Bankruptcy Code are denominated “core proceedings” pursuant to 28 U.S.C. § 157(b)(2). To the extent permitted by applicable law, Defendant does not consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Defendant denies the remaining allegations in Paragraph 4 of the Complaint because they call for legal conclusions to which no response is required. To the extent a response is required, the remaining allegations are denied.**

5. Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**ANSWER: Defendant denies the allegation in Paragraph 5 of the Complaint because it calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.**

### **THE PARTIES**

#### ***The Liquidation Trust***

6. On December 4, 2017 (the “Initial Petition Date”), certain of the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. Other of the Debtors followed with their own voluntary cases (collectively with those of the original Debtors, the “Bankruptcy Cases”) within the following four months (each such date, including the Initial Petition Date, a “Petition Date”).

**ANSWER: In response to Paragraph 6, Defendant admits the allegations contained in this paragraph.**

7. On October 26, 2018, this Court entered an order confirming the Plan (Bankr. Docket No. 2903).

**ANSWER: In response to Paragraph 7, Defendant admits the allegations contained in this paragraph.**

8. The Plan provides for, *inter alia*, the establishment of the Liquidation Trust on the Effective Date of the Plan for the benefit of the Liquidation Trust Beneficiaries in accordance with the terms of the Plan and the Liquidation Trust Agreement. *See* Plan §§ 1.75, 5.4.

**ANSWER: In response to Paragraph 8, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

9. The Effective Date of the Plan occurred on February 15, 2019.

**ANSWER: In response to Paragraph 9, Defendant admits the allegations contained in this paragraph.**

10. On February 25, 2019, the Court entered an order closing the Bankruptcy Cases of all Debtors except Woodbridge Group of Companies, LLC and Woodbridge Mortgage Investment Fund 1, LLC (together, the “Remaining Debtors”). The Remaining Debtors’ Bankruptcy Cases are jointly administered under Case No. 17-12560 (BLS).

**ANSWER: In response to Paragraph 10, Defendant admits the allegations contained in this paragraph.**

11. On the Effective Date, the Liquidation Trust was automatically vested with all of the Debtors’ and the Estates’ respective rights, title, and interest in and to all Liquidation Trust Assets. *See* Plan § 5.4.3. Further, the Liquidation Trust, as successor in interest to the Debtors, has the right and power to file and pursue any and all “Liquidation Trust Actions” without any further order of the Bankruptcy Court. *Id.* § 5.4.15. “Liquidation Trust Actions” include, *inter alia*, “all Avoidance Actions and Causes of Action held by the Debtors or the Estates ....” *Id.* § 1.76.

**ANSWER: In response to Paragraph 11, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

12. In addition to its status as successor in interest to the Debtors and their estates, the Liquidation Trust also holds claims held by Investors who elected to contribute to the Liquidation Trust certain causes of action that those Investors possess against individuals such as Defendant (the “Contributed Claims”). *Id.* § 1.28 (defining “Contributed Claims” to include “All Causes of Action that a Noteholder or Unitholder has against any Person that is not a Released Party and that are related in any way to the Debtors, their predecessors, their respective affiliates, or any Excluded

Parties, including ... all Causes of Action based on, arising out of, or related to the marketing, sale, and issuance of any Notes or Units; ... all Causes of Action based on, arising out of, or related to the misrepresentation of any of the Debtors' financial information, business operations, or related internal controls; and ... all Causes of Action based on, arising out of, or related to any failure to disclose, or actual or attempted cover up or obfuscation of, any of the conduct described in the Disclosure Statement, including in respect of any alleged fraud related thereto”).

**ANSWER: In response to Paragraph 12, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

***Defendant***

13. Defendant is an individual residing in the State of Michigan. Upon information and belief, Defendant acted as a financial advisor and/or broker that sold securities to the public and provided investment services.

**ANSWER: In response to Paragraph 13, Defendant admits that he is an individual residing in the State of Michigan. Defendant denies any remaining allegations contained in this paragraph.**

14. Defendant sold Notes and Units to unsuspecting Investors, created marketing materials and sales scripts to facilitate the sale of Notes and Units to unsuspecting Investors (often targeting unsophisticated, elderly investors with Individual Retirement Accounts). In so doing, Defendant made materially false and fraudulent statements to induce Investors to provide money. In connection with such conduct, Defendant, directly or indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

**ANSWER:** In response to Paragraph 14, Defendant denies the allegations contained in this paragraph.

**FACTUAL BACKGROUND**

***The Fraud***

15. At least since July 2012 until shortly before they sought bankruptcy protection, the Debtors were operated as a Ponzi scheme. As this Court explained in its order confirming the Plan:

The evidence demonstrates, and the Bankruptcy Court hereby finds, that (i) beginning no later than July 2012 through December 1, 2017, Robert H. Shapiro used his web of more than 275 limited liability companies, including the Debtors, to conduct a massive Ponzi scheme raising more than \$1.22 billion from over 8,400 unsuspecting investors nationwide; (ii) the Ponzi scheme involved the payment of purported returns to existing investors from funds contributed by new investors; and (iii) the Ponzi scheme was discovered no later than December 2017.

**ANSWER:** In response to Paragraph 15, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.

16. The securities sold by Defendant (*i.e.*, the Debtors' Notes and Units) were not registered with the Securities and Exchange Commission (the "SEC") or applicable state securities agencies and there was no applicable exemption from registration. Nor was Defendant registered as a broker-dealer with the SEC or applicable state agencies.

**ANSWER:** In response to Paragraph 16, Defendant admits that he was not registered as a broker-dealer with the SEC or applicable state agencies. Defendant denies that he sold any securities. As to any remaining allegations, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.

17. Investors were often told that they were investing money to be loaned with respect to particular properties owned by third parties, that those properties were worth substantially more

than the loans against the properties, and that they would have the benefit of a stream of payments from these third parties for high-interest loans, protected by security interests and/or mortgages against such properties. Shapiro and his lieutenants represented to Investors that the Debtors' profits would be generated by the difference between the interest rate the Debtors charged its third-party borrowers and the interest rate it paid Investors.

**ANSWER: In response to Paragraph 17, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

18. In reality, these statements were lies. Investors' money was almost never used to make high-interest loans to unrelated, third-party borrowers, and there was no stream of payments; instead, Investors' money was commingled and used for an assortment of items, including maintaining a lavish lifestyle for Shapiro and his family, brokers' commissions, overhead (largely for selling even more Notes and Units to Investors), and payment of principal and interest to existing Investors. The money that was used to acquire properties (almost always owned by a disguised affiliate) cannot be traced to any specific Investor. These are typical characteristics of Ponzi schemes.

**ANSWER: In response to Paragraph 18, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

19. Because the Debtors operated as a Ponzi scheme, obtaining new money from Investors into the Ponzi scheme conferred no net benefit on the Debtors; on the contrary, each new investment was a net negative. Money was siphoned off to pay the expenses described above, so that the Debtors actually received only a fraction of the investment dollars. New money also perpetuated the Ponzi scheme, as such money enabled the Debtors to return fictitious "profits" to early Investors – an essential component of the scheme, because "repaying" early Investors led to

new investments, without which the house of cards would fall, as it eventually did. At the same time, each investment created an obligation to return to the defrauded Investor 100% of the investment, such that each new investment increased the Debtors' liabilities and ultimately left them unable to satisfy their aggregate liabilities.

**ANSWER: In response to Paragraph 19, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

*The Proof(s) of Claim*

20. Defendant was scheduled by the Debtors for claims against the Debtors as identified in particular on Exhibit A hereto (collectively the "Claims"). The Claims are based on Notes and/or Units held by and commissions owed to Defendant.

**ANSWER: In response to Paragraph 20, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

21. Defendant engaged in activities that generated investments in the Debtors. Defendant is or was in the business of selling investment products, including the Debtors' Notes and/or Units, to retail investors. Defendant solicited and sold Notes and/or Units to investors. Defendant received commission payments from the Debtors on account of Notes and/or Units sold to investors.

**ANSWER: In response to Paragraph 21, Defendant admits that he received commission payments on account of Notes and/or Units sold by one or more of the Debtors to investors related to his introduction of potential investors to one or more of the Debtors. Defendant denies any remaining allegations contained in this paragraph.**

*The Transfers*

22. Plaintiff is informed and believes and thereupon alleges that within the two years preceding the Initial Petition Date, Defendant received transfers totaling not less than the amount set forth on Exhibit B hereto (the “Two Year Transfers” or the “Transfers”), including commission payments and other compensation. The Two Year Transfers – including the transferor, its Petition Date, the date of each transfer, and the amount of each transfer – are set forth on Exhibit B.

**ANSWER: In response to Paragraph 22, Defendant admits the allegations contained in this paragraph.**

### **FIRST CLAIM FOR RELIEF**

#### **Avoidance and Recovery of Actual Intent Fraudulent Transfers – Bankruptcy Code**

23. Plaintiff realleges and incorporates herein Paragraphs 1 through 22, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

24. The Two Year Transfers constituted transfers of the Debtors’ property.

**ANSWER: In response to Paragraph 24, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

25. The Two Year Transfers were made by the Debtors with actual intent to hinder or delay or defraud their creditors insofar as the services allegedly provided in exchange for such transfers perpetuated a Ponzi scheme.

**ANSWER: In response to Paragraph 25, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

26. The Two Year Transfers were made to or for the benefit of Defendant.

**ANSWER: In response to Paragraph 26, Defendant admits the allegation contained in this paragraph.**

27. As a result of the foregoing, Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 548(a), 550(a), and 551: (a) avoiding the Two Year Transfers free and clear of any claimed interest of Defendant, (b) directing that the Two Year Transfers be set aside, and (c) recovering such Two Year Transfers or the value thereof from Defendant for the benefit of the Liquidation Trust.

**ANSWER: In response to Paragraph 27, Defendant denies the allegations contained in this paragraph.**

### **SECOND CLAIM FOR RELIEF**

#### **Avoidance and Recovery of Constructive Fraudulent Transfers – Bankruptcy Code**

28. Plaintiff realleges and incorporates herein Paragraphs 1 through 27, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

29. The Two Year Transfers constituted transfers of the Debtors' property.

**ANSWER: In response to Paragraph 29, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

30. The Two Year Transfers were made by the Debtors for less than reasonably equivalent value at a time when the Debtors (i) were insolvent; and/or (ii) were engaged or about to engage in business or a transaction for which any capital remaining with the Debtors were an unreasonably small capital; and/or (iii) intended to incur, or believed that Debtors would incur, debts beyond their ability to pay as such debts matured.

**ANSWER: In response to Paragraph 30, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

31. The Two Year Transfers were made to or for the benefit of Defendant.

**ANSWER: In response to Paragraph 31, Defendant admits the allegation contained in this paragraph.**

32. As a result of the foregoing, Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 548(a), 550(a), and 551: (a) avoiding the Two Year Transfers free and clear of any claimed interest of Defendant, (b) directing that the Two Year Transfers be set aside, and (c) recovering such Two Year Transfers or the value thereof from Defendant for the benefit of the Liquidation Trust.

**ANSWER: In response to Paragraph 32, Defendant denies the allegations contained in this paragraph.**

### **THIRD CLAIM FOR RELIEF**

#### **Avoidance and Recovery of Actual Intent Voidable Transactions – State Law**

33. Plaintiff realleges and incorporates herein Paragraphs 1 through 32, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

34. The Two Year Transfers constituted transfers of the Debtors' property.

**ANSWER: In response to Paragraph 34, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

35. The Two Year Transfers were made by the Debtors with actual intent to hinder or delay or defraud their creditors insofar as the services allegedly provided in exchange for such transfers perpetuated a Ponzi scheme.

**ANSWER: In response to Paragraph 35, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

36. The Two Year Transfers were made to or for the benefit of Defendant.

**ANSWER: In response to Paragraph 36, Defendant admits the allegation contained in this paragraph.**

37. Each Debtor that made any of the Two Year Transfers had at least one creditor with an allowable unsecured claim for liabilities, which claim remained unsatisfied as of the Petition Date.

**ANSWER: In response to Paragraph 37, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

38. The Two Year Transfers are avoidable under applicable law – California Civil Code section 3439.04(a)(1) and/or comparable provisions of law in other jurisdictions that have adopted the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act or the Uniform Fraudulent Conveyance Act – by a creditor holding an allowed unsecured claim and thus by Plaintiff pursuant to Bankruptcy Code section 544(b).

**ANSWER: Defendant denies the allegation in Paragraph 38 of the Complaint because it calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.**

39. As a result of the foregoing, Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 544(b), 550(a), and 551: (a) avoiding the Two Year Transfers free and clear of any claimed interest of Defendant, (b) directing that the Two Year Transfers be set aside, and (c) recovering such Two Year Transfers or the value thereof from Defendant for the benefit of the Liquidation Trust.

**ANSWER: In response to Paragraph 39, Defendant denies the allegations contained in this paragraph.**

**FOURTH CLAIM FOR RELIEF**

**Avoidance and Recovery of Constructive Voidable Transactions – State Law**

40. Plaintiff realleges and incorporates herein Paragraphs 1 through 39, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

41. The Two Year Transfers constituted transfers of the Debtors' property.

**ANSWER: In response to Paragraph 41, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

42. The Two Year Transfers were made by the Debtors for less than reasonably equivalent value at a time when the Debtors (i) were insolvent; and/or (ii) were engaged or was about to engage in business or a transaction for which any capital remaining with the Debtors were an unreasonably small capital; and/or (iii) intended to incur, or believed that it would incur, debts beyond their ability to pay as such debts matured.

**ANSWER: In response to Paragraph 42, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

43. The Two Year Transfers were made to or for the benefit of Defendant.

**ANSWER: In response to Paragraph 43, Defendant admits the allegation contained in this paragraph.**

44. At the time of and/or subsequent to each of the Two Year Transfers, each Debtor that made any of the Two Year Transfers had at least one creditor with an allowable unsecured claim for liabilities, which claim remained unsatisfied as of the Petition Date.

**ANSWER: In response to Paragraph 44, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

45. The Two Year Transfers are avoidable under applicable law – California Civil Code section 3439.04(a)(2) and/or comparable provisions of law in other jurisdictions that have adopted the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act or the Uniform Fraudulent Conveyance Act – by a creditor holding an allowed unsecured claim and thus by Plaintiff pursuant to Bankruptcy Code section 544(b).

**ANSWER: Defendant denies the allegation in Paragraph 45 of the Complaint because it calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.**

46. As a result of the foregoing, Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 544(b), 550(a), and 551: (a) avoiding the Two Year Transfers free and clear of any claimed interest of Defendant, (b) directing that the Two Year Transfers be set aside, and (c) recovering such Two Year Transfers or the value thereof from Defendant for the benefit of the Liquidation Trust.

**ANSWER: In response to Paragraph 46, Defendant denies the allegations contained in this paragraph.**

#### **FIFTH CLAIM FOR RELIEF**

##### **Objection to Claims (Bankruptcy Code Section 502(d))**

47. Plaintiff realleges and incorporates herein Paragraphs 1 through 46, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if set forth fully herein.**

48. The Claims are not allowable because:

- a. Defendant received property, i.e., the Transfers, recoverable under Bankruptcy Code section 550; and/or

- b. Defendant received a transfer, i.e., the Transfers, avoidable under Bankruptcy Code section 544, 547, or 548.

**ANSWER: In response to Paragraph 48, Defendant states that he has not filed a claim in any of the Debtor's cases and therefore denies the allegations contained in this paragraph.**

49. In either event, the Claims must be disallowed under Bankruptcy Code section 502(d) unless and until Defendant have fully repaid the amount, or turned over any such property, for which Defendant is liable under Bankruptcy Code section 550.

**ANSWER: In response to Paragraph 49, Defendant states that he has not filed a claim in any of the Debtor's cases and therefore denies the allegations contained in this paragraph.**

#### **SIXTH CLAIM FOR RELIEF**

##### **Equitable Subordination of Claims**

50. Plaintiff realleges and incorporates herein Paragraphs 1 through 49, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if set forth fully herein.**

51. By providing services that helped perpetuate a Ponzi scheme, Defendant engaged in inequitable conduct.

**ANSWER: In response to Paragraph 51, Defendant denies the allegations contained in this paragraph.**

52. Defendant's inequitable conduct has resulted in injury to the Debtors' estates and their other creditors and/or has conferred an unfair advantage on Defendant.

**ANSWER: In response to Paragraph 52, Defendant denies the allegations contained in this paragraph.**

53. Principles of equitable subordination require that any claims asserted by Defendant be equitably subordinated to all other claims against the Debtors.

**ANSWER: In response to Paragraph 53, Defendant denies the allegation contained in this paragraph.**

54. Equitable subordination as requested herein is consistent with the provisions and purposes of the Bankruptcy Code.

**ANSWER: In response to Paragraph 54, Defendant denies the allegation contained in this paragraph.**

55. As a result of the foregoing, Plaintiff is entitled to judgment pursuant to Bankruptcy Code section 510(c) equitably subordinating any and all claims that Defendant may assert against any of the Debtors, whatever the origin of those claims, including, without limitation, the Claims and any claims that may be asserted under Bankruptcy Code section 502(h), to all other claims against the Debtors.

**ANSWER: In response to Paragraph 55, Defendant denies the allegations contained in this paragraph.**

#### **SEVENTH CLAIM FOR RELIEF**

##### **Sale of Unregistered Securities (Securities Act Sections 5(a), 5(c), and 12(a))**

56. Plaintiff realleges and incorporates herein Paragraphs 1 through 55, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

57. The Notes and Units sold by Defendant were securities within the meaning of the Securities Act.

**ANSWER: In response to Paragraph 57, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

58. No registration statement was filed or in effect with the SEC pursuant to the Securities Act with respect to the securities issued by the Debtors as described in this Complaint and no exemption from registration existed with respect to these securities.

**ANSWER: In response to Paragraph 58, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

59. From in or about July 2012 through at least December 4, 2017, Defendant directly and indirectly:

- a. made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- b. carried or caused to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or
- c. made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security,

without a registration statement having been filed or being in effect with the SEC as to such securities.

**ANSWER: In response to Paragraph 59, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

60. By reason of the foregoing, Defendant violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

**ANSWER: In response to Paragraph 60, Defendant denies the allegations contained in this paragraph.**

61. The Investors who contributed their claims to the Liquidation Trust purchased the unregistered securities issued by the Debtors and as a direct and proximate result sustained significant damages. Accordingly, the Liquidation Trust has standing under Section 12(a)(1) of the Securities Act, 15 U.S.C. § 77l(a)(1), to bring a cause of action seeking damages based on Defendant's violations of Section 5(a) and 5(c) of the Securities Act.

**ANSWER: In response to Paragraph 61, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

62. As a result of the foregoing, Plaintiff is entitled to judgment holding Defendant liable for the sale of unregistered securities, as set forth in Exhibit C, or in an amount to be proven at trial.

**ANSWER: In response to Paragraph 62, Defendant denies the allegations contained in this paragraph.**

### **EIGHTH CLAIM FOR RELIEF**

#### **Fraud**

63. Plaintiff realleges and incorporates herein Paragraphs 1 through 62, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

64. Defendant misrepresented the facts to Investors, including by making affirmative misrepresentations and by concealing and failing to disclose the true facts. Among the misrepresentations were that Investors were often told that they were investing money to be loaned with respect to particular properties owned by third parties, that those properties were worth substantially more than the loans against the properties, and that they would have the benefit of a

stream of payments from these third parties for high-interest loans, protected by security interests and/or mortgages against such properties.

**ANSWER: In response to Paragraph 64, Defendant denies the allegations contained in this paragraph.**

65. In reality, these statements were lies. Investors' money was almost never used to make high-interest loans to unrelated, third-party borrowers, and there was no stream of payments; instead, Investors' money was commingled and used for an assortment of expenses, including maintaining a lavish lifestyle for Shapiro and his family, brokers' commissions, overhead (largely for selling even more Notes and Units to Investors), and payment of principal and interest to existing investors. The money that was used to acquire properties (almost always owned by a disguised affiliate) cannot be traced to any specific Investor.

**ANSWER: In response to Paragraph 65, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

66. Defendant made these misrepresentations knowingly, with scienter, and with intent to defraud Investors.

**ANSWER: In response to Paragraph 66, Defendant denies the allegations contained in this paragraph.**

67. The Investors who contributed their claims to the Liquidation Trust justifiably relied on Defendant's misrepresentations of facts, and as a direct and proximate result sustained hundreds of millions of dollars in damages.

**ANSWER: In response to Paragraph 67, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

68. As a result of the foregoing, Plaintiff is entitled to judgment holding Defendant liable for fraud, as set forth in Exhibit C, or in an amount to be proven at trial.

**ANSWER: In response to Paragraph 68, Defendant denies the allegations contained in this paragraph.**

### **NINTH CLAIM FOR RELIEF**

#### **Aiding and Abetting Fraud**

69. Plaintiff realleges and incorporates herein Paragraphs 1 through 68, as if fully set forth herein.

**ANSWER: Defendant hereby incorporates his prior responses as if fully set forth herein.**

70. Shapiro – an architect of the fraud – also misrepresented the facts to Investors, and did so knowingly, with scienter, and with intent to defraud Investors. The Investors who contributed their claims to the Liquidation Trust justifiably relied on Shapiro’s misrepresentations of facts, and as a direct and proximate result sustained hundreds of millions of dollars in damages.

**ANSWER: In response to Paragraph 70, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

71. Defendant knowingly and substantially assisted Shapiro in defrauding Investors.

**ANSWER: In response to Paragraph 71, Defendant denies the allegations contained in this paragraph.**

72. Defendant was aware of Shapiro’s fraud and acted knowingly in providing substantial and material assistance to Shapiro.

**ANSWER: In response to Paragraph 72, Defendant denies the allegations contained in this paragraph.**

73. Defendant substantially benefited by receiving income, commissions, and bonuses.

**ANSWER: In response to Paragraph 73, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies them.**

74. As a result of the foregoing, Plaintiff is entitled to judgment holding Defendant liable for aiding and abetting fraud, as set forth in Exhibit C, or in an amount to be proven at trial, in an amount to be proven at trial.

**ANSWER: In response to Paragraph 74, Defendant denies the allegations contained in this paragraph.**

**GENERAL DENIAL**

Defendant denies each and every allegation contained in the Complaint that is not hereinabove expressly admitted and Defendant further denies that Plaintiff is entitled to any relief or recovery whatsoever from Defendant in this action.

**PRAYER FOR RELIEF**

WHEREFORE, for the reasons set forth hereinabove, Defendant prays this Court: (1) deny judgment in favor of the Trustee; (2) enter a dismissal of this matter with prejudice in favor of Defendant; (3) award Defendant costs incurred herein; and (4) for such further relief as the Court deems just and proper.

## **AFFIRMATIVE DEFENSES**

For its affirmative defenses, Defendant states as follows:

1. Plaintiff's claims may be barred by 11 U.S.C. § 550(b) because Defendant, as transferee or subsequent transferee, took the transfer for value, in good faith and without knowledge of the alleged voidability of the transfers.
2. Plaintiff's claims may be barred or limited pursuant to 11 U.S.C. § 548(c) as a result of value provided in good faith by Defendant.
3. Plaintiff may be barred from recovering any alleged transfers from the Defendant under 11 U.S.C. § 502(d) due to prior rulings and orders of this court.
4. Plaintiff may lack standing.
5. Plaintiff's claims may be barred or limited by the applicable statute of limitations.
6. Plaintiff's claims may be barred or limited by the doctrine of laches.
7. Plaintiff's claims may be barred or limited by the equitable doctrine of unclean hands, waiver, estoppel or other equitable doctrine.
8. Plaintiff's claims may be barred or limited by their acquiescence.
9. Plaintiff has failed to state a claim upon which relief can be granted.
10. The Complaint fails to properly assert personal and/or subject matter jurisdiction over Defendant.
11. Plaintiff failed to mitigate any alleged damages, said damages being specifically denied by Defendant.
12. No conduct on the part of Defendant contributed to Plaintiff's alleged damages.
13. Any damages claimed by Plaintiff, said damages being specifically denied by Defendant, were caused by the culpable conduct of the Plaintiff or third parties and not by any

culpable conduct on the part of Defendant.

14. Plaintiff has failed to plead with the requisite specificity required under Bankruptcy Rule 7009, which incorporates Fed. R. Civ. P. 9(b).

15. Defendant did not engage in either actual or constructive fraud, illegality or breach any duty owed to the Debtor.

16. Debtor was not insolvent at the time of the payments made to Defendant.

17. Debtor's payment of the alleged Transfers did not leave Debtor with unreasonably small capital.

18. Any action taken by Defendant was not taken to hinder, delay or defraud the Debtors, investors or creditors of the Debtor.

19. Payment by Debtor of the Transfers was not made with actual intent to hinder, delay, or defraud creditors.

Discovery may reveal the existence of additional affirmative defenses and Defendant reserves his right to amend their list of Affirmative Defenses as additional facts become known during discovery.

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Wilmington, Delaware

Respectfully submitted,

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