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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

THOMAS A. HANTGES,

Debtor.

USACM LIQUIDATING TRUST,

Plaintiff,

v.

THOMAS A. HANTGES,

Defendant.

Case No. BK-S-07-13163-lbr

Judge Linda B. Riegler

Adversary No. _____

**USACM LIQUIDATING TRUST'S
COMPLAINT TO DETERMINE
NON-DISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. § 523(a)(2)(A)
AND (6)**

Plaintiff USACM Liquidating Trust (the "USACM Trust"), as the duly authorized successor-in-interest to USA Commercial Mortgage Company ("USACM"), brings this action against Thomas A. Hantges to determine the non-dischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A) and (6) and in support thereof alleges as follows:

I. INTRODUCTION

1. In April 2006, USACM and its related companies collapsed under the weight of the massive fraud perpetrated on them by certain insiders, namely Thomas A. Hantges ("Hantges" or the "Debtor" in this bankruptcy case) and Joseph D. Milanowski ("Milanowski") (collectively, the "Culpable Insiders"). The Culpable Insiders employed a pervasive "Ponzi"-like scheme in which

1 they looted and/or misappropriated tens of millions of dollars from USACM. Their scheme left the
2 company exposed to millions of dollars in additional liabilities to private Investors who entrusted
3 their money to USACM for placement into various loans (the “Investors”). As a result of these
4 wrongful activities and staggering losses, USACM filed for bankruptcy protection on April 13,
5 2006, in the United States Bankruptcy Court for the District of Nevada.

6 2. USACM was a mortgage broker and loan servicing company whose primary
7 business activities were: (i) “originating” short-term loans by Investors to commercial real estate
8 developers; and (ii) servicing the loans that it originated by collecting principal and interest from
9 borrowers and distributing those payments to the Investors. USACM earned revenue by charging
10 various fees for these services, including origination, servicing, and extension fees. Between early
11 1997 and early 2006, USACM handled more than \$2.6 billion in loans to real estate developers
12 through originations, servicing, and extensions. At the time of its bankruptcy filing in April 2006,
13 \$960 million of these loans remained outstanding.

14 3. The Culpable Insiders concealed delinquent and defaulted loans from other USACM
15 directors, officers, employees, shareholders, as well as the Investors and regulatory authorities
16 (collectively, the “Stakeholders”). This allowed the Culpable Insiders to continue looting and
17 otherwise using USACM as a tool to further their own self-interests, all to the detriment of USACM
18 and its creditors. The Culpable Insiders turned USACM’s loan servicing operations into a massive
19 Ponzi-like scheme, by misallocating and/or commingling available funds within the “USA Capital”
20 group to ensure that Investors received regular interest and principal payments, even for non-
21 performing or uncollectible loans.

22 4. USACM lost millions of dollars by paying loan obligations that it did not owe. By
23 causing USACM to make timely interest payments and principal repayments to Investors on behalf
24 of non-performing borrowers, the Culpable Insiders were able to lull Investors into a false sense of
25 security. Indeed, the Culpable Insiders continually publicized the fact that no Investor had ever lost
26 money on a loan serviced by USACM, suggesting that USACM serviced loans never defaulted.

1 This was far from reality. This false representation induced existing Investors to maintain or
2 increase their investments with USACM and enticed new Investors to entrust their money to
3 USACM, thereby providing the Culpable Insiders with liquidity to run their scheme, and thus,
4 future sources of funds to loot from USACM.

5 5. In order to gain access to more Investors' funds and less Investor scrutiny over each
6 loan, the Culpable Insiders, established Diversified Trust Deed Fund ("DTDF") and First Trust
7 Deed Fund ("FTDF") (collectively, the "Funds"). With the creation of the Funds, Investors were
8 able to purchase shares in the Funds instead of shares of a single loan. Then, the Funds, under the
9 direction of the Culpable Insiders, acted as investors in USACM loans. Thus, the Funds not only
10 gave the Culpable Insiders greater access to Investors' money, they also provided the Culpable
11 Insiders with a means to bypass both the strict regulatory framework governing lending practices
12 and individual Investors' scrutiny. The Culpable Insiders managed the Funds as well as USACM—
13 the servicer on the Funds' loans, which enabled them to effectively control the activities of all
14 aspects of Investor monies.

15 6. The Culpable Insiders used the Funds, particularly DTDF, to facilitate and
16 perpetuate their fraud. Specifically, the Culpable Insiders used DTDF to create liquidity and fund
17 the Ponzi-like scheme. The Culpable Insiders used principal and interest payments that were
18 payable to the Funds to pay interest and principal obligations to direct Investors on non-performing
19 or otherwise worthless loans.

20 7. Previously the Culpable Insiders had created an affiliated entity named USA
21 Investment Partners ("USAIP"). At all relevant times, the Culpable Insiders, owned and managed
22 USAIP. USAIP loaned no money to the many real estate deals that USACM serviced, yet Hantges
23 and the other Culpable Insiders sent millions of USACM's dollars to USAIP and directed that
24 numerous borrowers/developers convey fees and/or interests in the various real estate deals as a
25 "kick back" to providing the loan.
26

1 8. In the end, after USACM filed for bankruptcy protection, USAIP signed a note for
2 repayment of \$58 million in funds that they had wrongfully transferred from USACM to USAIP.¹
3 Both the direct lenders and the two funds have filed millions of dollars in proofs of claim against the
4 trust for the Culpable Insiders' conduct.

5 9. Hantges served as an officer and director of USACM and played a key role in the
6 fraudulent transactions described herein. As an officer and director of USACM, Hantges owed a
7 fiduciary duty to act at all times with the utmost good faith and fair dealing and in the best interests
8 of USACM. Moreover, Hantges owed fiduciary duties to USACM's creditors at such time as
9 USACM entered the zone of insolvency, which was followed quickly by a state of actual
10 insolvency.

11 10. As a director and an officer of USACM, Hantges breached his fiduciary duties and is
12 liable to the Trust for (i) commingling Investors' monies and USACM's monies and using them to
13 perpetuate the fraudulent scheme described herein; (ii) intentionally concealing delinquent and
14 defaulted loans in order to deceive and induce Investors to provide additional capital to fund the
15 fraudulent scheme; (iii) consistently looting USACM's funds and using them to fund USAIP and
16 other non-USACM ventures in which he stood to benefit personally; (iv) usurping USACM's
17 corporate opportunities to earn fees and/or the conveyance of back-end interests in real estate deals
18 to USAIP; and (v) engaging in a fraud that allowed him to systematically loot USACM for his own
19 personal benefit. Hantges' fiduciary duties required him to keep USACM fully advised regarding
20 the true nature of the transactions they engaged in and to prevent USACM from entering into
21 transactions that were harmful to USACM.

22 11. Hantges' liability to the Trust is the result of materially false representations and
23 actual fraud. Moreover, Hantges willfully and maliciously injured USACM, its Stakeholders, and
24 Investors through his fraudulent actions. USACM, its Stakeholders, and Investors justifiably relied,
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26 ¹ This Note was approved by an Order of the Bankruptcy Court (Docket No. 946) overseeing the USACM case and this case. Separately, USAIP also signed a \$55 million note for repayment of funds looted from DTDF.

1 to their detriment, on Hantges' material false statements, misrepresentations, and omissions. As
2 such, Hantges' liability to the Trust, in an amount to determined, is not and should not be
3 dischargeable under 11 U.S.C. § 523 (a)(2)(A) and (6).

4 12. The Trust is continuing to investigate the facts and circumstances surrounding the
5 bankruptcy filing of USACM. The fraudulent scheme perpetrated by Culpable Insiders was so
6 pervasive and occurred over such an extended period of time that the Trust is unable to describe
7 herein every transaction that contributed to the overall fraud. The Trust expressly reserves the right
8 to amend this Complaint to allege additional facts and grounds for non-dischargeability of Hantges'
9 debt to the Trust under 11 U.S.C. § 523(a).

10 **II. JURISDICTION AND VENUE**

11 13. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 157 and 1334
12 and 11 U.S.C. § 523. This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001(6) and a
13 core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)(I) and (O).

14 14. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

15 **III. PARTIES**

16 **A. PLAINTIFF**

17 15. Plaintiff USACM Trust was created pursuant to the Third Amended Joint Chapter
18 11 Plan of Reorganization (the "Joint Plan") filed by USACM and the other four debtors in Case
19 No. 06-10725 (Docket No. 1799). The Joint Plan was confirmed by the Bankruptcy Court on
20 January 8, 2007, and became effective on March 12, 2007.

21 16. The Joint Plan expressly retained USACM's causes of action for enforcement by the
22 USACM Trust, pursuant to 11 U.S.C. § 1123(b)(3)(B). The Joint Plan also transferred certain
23 causes of action belonging to USA Capital First Trust Deed Fund, LLC to the USACM Trust. The
24 USACM Trust, therefore, has standing to bring this action against the Defendant.
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1 17. The USACM Trust is a liquidating trust organized under Nevada law. The USACM
2 Trust's beneficiaries are the holders of allowed unsecured claims against USACM. Geoffrey L.
3 Berman serves as the trustee of the USACM Trust

4 **B. DEFENDANT**

5 18. Defendant, Thomas A. Hantges ("Hantges" or "Debtor"), is an individual residing in
6 the State of Nevada at 47 Nightshade Court, Henderson, Nevada 89074. Hantges is the debtor in
7 the above-referenced bankruptcy case.

8 **IV. STATEMENT OF FACTS**

9 **A. ORIGINS OF "USA CAPITAL" AND ITS DEMISE**

10 19. In order to fully understand the fraudulent scheme engineered and perpetrated by
11 Hantges (and other Culpable Insiders), it is necessary to understand the history of "USA Capital"
12 and its demise.

13 20. In May 1987, Hantges and David Berkowitz ("Berkowitz") founded the "USA
14 Capital" group of entities with the creation of USA Capital Management Group, Inc. ("USA Capital
15 Management Group"), a full-service securities broker-dealer. Milanowski joined USA Capital
16 Management Group as a part-time employee in 1991 and became a full-time employee in 1993.

17 21. On February 28, 1989, Hantges and Berkowitz founded USACM, which they
18 originally used as a mortgage company. By the mid-1990s, Hantges, Milanowski, and Berkowitz
19 began using USACM as a mortgage broker to "originate" commercial real estate loans.

20 22. USACM's early brokerage model consisted of arranging commercial loans secured
21 by real property on the Investors' behalf. Investors obtained partial interests in loans being offered
22 by USACM, and were listed as beneficiaries on the related promissory note and mortgage or deed
23 of trust recorded against the underlying property. The loans were typically short-term with a higher
24 yield than Investors could receive through more traditional investments.

25 23. In July 1995, Hantges acquired 100% of USACM's outstanding stock. He became
26 USACM's Chairman, Chief Executive Officer, President, Secretary, and a member of USACM's

1 board of directors. In February 1997, Hantges appointed Milanowski and Victoria Loob (“Loob”)
2 to serve as USACM’s Treasurer and Secretary, respectively. In September 1997, Hantges
3 appointed Milanowski as USACM’s President and a member of USACM’s board of directors.
4 Hantges transferred 40% of his USACM stock to Milanowski in late 1997.

5 24. This transition in management led to an increase in loan originations. Having
6 originated only eight (8) loans in 1995, USACM originated seventeen (17) loans in 1996 and thirty-
7 one (31) loans in 1997.

8 25. In mid-1997, USACM began servicing the loans that it originated. Each month,
9 USACM was allowed to pay itself a servicing fee out of the monthly interest payments made by
10 borrowers, while remitting the balance of the payments to Investors. This servicing fee was equal to
11 between one-quarter of one percent and four percent of the principal balance of the loan per annum.
12 Under the typical arrangement, USACM was also entitled to origination fees, points, late fees,
13 extension fees, default interest, and other fees and expenses paid or reimbursed by the borrower.

14 26. Hantges and Milanowski assigned oversight of loan servicing operations and
15 collection of fees to Loob. Loob kept records of the flow of funds to and from borrowers and
16 Investors separate from the general accounting records of USACM. These loan servicing records
17 were concealed from the USACM agents soliciting investments in new loans and from some of the
18 USACM officers, directors, and shareholders who assumed key roles in the company in later years,
19 including Paul Hamilton (“Hamilton”) in November 1999, Robert A. Hilson (“Hilson”) in January
20 2002, and Linda Howe (“Howe”) in July 2002.

21 27. Internal loan servicing allowed Culpable Insiders to conceal non-performing loans
22 from Investors. The Culpable Insiders caused USACM to make “prepayments”² of interest to
23 Investors on non-performing loans. The Culpable Insiders drew upon various sources to fund these
24 prepayments, including USACM assets and funds that had been paid to USACM by other
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26 ² Prepayment is defined in this matter as payments of interest or principal to Investors where the borrowers had not in fact made such interest or principal payments to USACM.

1 borrowers. These prepayments allowed the Culpable Insiders to continue to claim that no Investor
2 ever failed to receive a payment, thereby ensuring that Investors would continue to provide fresh
3 capital to fund the Ponzi-like scheme and the Culpable Insiders' personal endeavors. These
4 prepayments, of course, were completely adverse to USACM's interests, as USACM had no
5 liability on the underlying loans.

6 28. The Culpable Insiders also concealed when borrowers missed principal payments on
7 certain loans from Investors. In order to retain the appearance that all USACM brokered loans were
8 performing, the Culpable Insiders: (a) caused USACM and its affiliates to make payments on behalf
9 of borrowers; (b) assigned Investors' interests in bad loans to entities owned or controlled by the
10 Culpable Insiders; (c) created new entities to take over the position of the defaulting borrower;
11 and/or (d) granted extensions to borrowers without disclosing pertinent facts to Investors. These
12 actions led Investors to believe that they were either fully paid or their investments were still
13 performing. This allowed the Culpable Insiders to continue their Ponzi-like scheme while
14 minimizing scrutiny of bad loans. These actions were totally adverse to USACM's interests as
15 USACM had no duty to make payments on behalf of borrowers or take Investors out of bad loans,
16 but instead was obligated only to report the missed payments to Investors. Furthermore, the new
17 Investors' money was of no benefit to USACM because the Culpable Insiders used it to continue
18 the Ponzi-like scheme or for their own personal gain.

19 29. Under Nevada law and under the terms of USACM's agreement with Investors,
20 USACM was required to notify Investors of non-performing loans. The Culpable Insiders
21 prevented USACM from notifying Investors that they were receiving prepaid interest, much less
22 that they had invested in either: (a) a non-performing loan; (b) a loan that had been taken over by
23 USACM; or (c) an existing loan that was "refinanced" through a new loan to other Investors. The
24 underlying Ponzi-like scheme, coupled with the misuse of USACM funds to fund non-performing
25 loans, prevented Investors from learning that borrowers were in default and that their investments
26 were at risk. Consequently, the Culpable Insiders, through USACM's network of brokers and

1 salespeople, were able to entice new Investors to invest money (and existing Investors to maintain or
2 increase their investments), thereby securing a continual source of funds that the Culpable Insiders
3 could use for their own purposes, including to re-pay non-performing loans.

4 30. As the late 1990s progressed, the size of USACM's non-performing loans grew
5 exponentially with the financial demise of two key USACM borrowers: (a) Inco Homes
6 Corporation ("Inco"), a California homebuilder to which USACM originated at least eighteen (18)
7 loans;³ and (b) Robert V. Jones Corp. ("RVJ"), a Nevada homebuilder to which USACM originated
8 at least nineteen (19) loans. By the end of the decade, Inco had fallen behind on several project
9 loans, including "Fontana" and "Desert Pride," and RVJ had fallen behind on "Canyon Creek
10 West," "Red Hills," and "Double Diamond Ranch" loans.

11 31. Inco declared bankruptcy in October 1999, and RVJ lost its Nevada contractor
12 license in early 2000. These borrower collapses led to a watershed moment in USACM's history,
13 as the Culpable Insiders decided to "take over" many of these projects for themselves and form their
14 own web of real estate development entities that used the trade name "Tanamera." These entities
15 concentrated operations in two distinct geographic areas: Northern Nevada and Southern California.

16 32. By necessity, when these loans were "taken over," the Culpable Insiders made it
17 look as though the loan had in fact been paid off by the original borrower. In truth, however, these
18 loans were not paid off, as the obligation was merely shifted from the original borrower to an entity
19 formed by the Culpable Insiders and funded by Investors.⁴ Again, none of this activity was publicly
20 disclosed to Investors or USACM's Stakeholders. Obviously, if the Culpable Insiders had disclosed
21 that they had "taken over" various loans because of borrowers' inability to pay, questions would
22 have been raised that would have led to the end of the Ponzi-like scheme.

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25 ³ Hantges was a shareholder and a director of Inco Homes.

26 ⁴ In other instances, the borrower's principals formed new entities funded by the Investors. These new entities bought out the original borrower's real estate interests to give the appearance of a wholly new loan, when, in fact, the Investors were merely lending money to the same underlying borrower.

1 33. In Southern California, the Culpable Insiders teamed with former Inco officers
2 David Fogg, Anthony Monaco, and Sue Monaco to form the Tanamera Southern California entities.
3 In Northern Nevada, Hantges and Milanowski teamed with former RVJ “partners” Kreg Rowe and
4 Brett Seabert to form the Tanamera Northern Nevada entities. The dozens of limited liability
5 companies that soon sprang up within the Tanamera groups were typically managed by the
6 Culpable Insiders through USAIP, with USAIP also taking a substantial ownership interest.

7 34. The Culpable Insiders also adopted a “fund” business model with the creation of
8 DTDF and FTDF in February 2000 and February 2001, respectively. Prior to the creation of the
9 funds, Investors lent directly to borrowers, with every Investor having a partial interest in the loan
10 and the underlying security for each loan. In some instances, hundreds of Investors were involved
11 in a given loan. Under the “fund” model, Investors purchased interests in DTDF and/or FTDF,
12 which then acted as at least one of Investors in loans originated and serviced by USACM. The
13 creation of FTDF and DTDF provided the Culpable Insiders with more immediate access to greater
14 amounts of Investor monies, while simultaneously limiting Investors’ oversight of the Culpable
15 Insiders’ actions.

16 35. The fund business model drastically increased the number of loans that the Culpable
17 Insiders could originate, both to independent borrowers and to themselves. Under Nevada Revised
18 Statutes § 645B.175, USACM was only permitted to hold Investors’ funds for forty-five (45) days
19 before either funding the underlying loan or returning Investors’ money, and USACM was not
20 permitted to partially fund a loan—*i.e.*, on a \$10 million loan, USACM was required to fund the
21 entire \$10 million. Taken together, this regulation made it difficult for the Culpable Insiders to
22 timely obtain enough Investors for: (a) very large loans (because they needed all of the money up
23 front); and (b) “bad” loans (because Investors would have the ability to look at the terms of the
24 specific transaction).

25 36. The use of FTDF and DTDF as “gap-filler” Investors in loans, coupled with
26 pervasive use of assignments to replace FTDF and/or DTDF with Investors as they became

1 available, enabled the Culpable Insiders to evade certain hurdles of the regulatory framework.
2 Specifically, if USACM was unable to solicit sufficient investments within the 45-day window to
3 fully fund a loan, the Culpable Insiders simply used FTDF and/or DTDF as additional Investors to
4 make up the shortfall. As additional Investors were found, FTDF and DTDF were taken out of their
5 position in the loan through the use of assignments.

6 37. The Culpable Insiders used FTDF and DTDF as gap-fillers in this way on many
7 loans, making up for tens and possibly hundreds of millions of dollars of loan principal shortfalls.
8 Not surprisingly, this coincided with a drastic increase in the number of loans originated by
9 USACM from 2001 through 2005. Some of these loans were made to borrowers owned and/or
10 controlled by the Culpable Insiders, many of which ultimately defaulted on their obligations.
11 Coupled with the extensive looting of USACM, these insider loans contributed to USACM's
12 eventual collapse in April 2006.

13 **B. HANTGES PARTICIPATED IN AN EXTENSIVE PONZI-LIKE SCHEME**

14 **(1) The Trust Accounts**

15 38. In order to service loans, USACM was required by Nevada Revised Statutes §
16 645B.175 to open and maintain two separate trust accounts: (a) an Investors trust account to be used
17 as a mechanism to pool lender deposits and make distributions to borrowers ("Investors Trust
18 Account"); and (b) a collections trust account to collect interest and principal payments made by
19 borrowers and to distribute these payments to Investors ("Collections Trust Account"). Payments
20 made out of Investors Trust Account and the Collections Trust Account should have been directly
21 traceable to the actual payments made into these accounts, less applicable fees. However, the
22 Culpable Insiders commingled funds belonging to both trust accounts with funds belonging to
23 USACM, and used such funds to fuel the Ponzi-like scheme.

24 39. The Investors Trust Account was designed to collect funds from Investors for
25 eventual distribution to borrowers. As a loan originator, USACM was entitled to origination fees
26 for its efforts in assisting borrowers to locate qualified Investors and collecting the funds for the

1 loan. Nevada law required USACM to deposit funds from the Investors directly into the Investors
2 Trust Account. Nevada law also required USACM to collect 100% of the loan amount from
3 Investors prior to closing the loan. Once the full amount was collected, USACM transferred the
4 money to an escrow agency for closing, and received its origination fees from the escrow company.
5 Upon information and belief, USACM did not always receive its origination fee. The money was
6 instead deposited in one of the trust accounts and used to further the Culpable Insiders' scheme.

7 40. In some instances, USACM took a partial interest as an investor rather than a cash
8 payment for its origination fee. The Culpable Insiders directed this activity so that USACM could
9 act as a gap-filler to make up for shortfalls in the amounts USACM's brokers had raised, thereby
10 side-stepping the Nevada statutory requirements. USACM often did not receive the regular interest
11 payments that it was entitled to as an investor. Rather, the Culpable Insiders directed USACM to
12 enter into these transactions on a zero interest basis. As new Investor funds were located, USACM
13 would transfer the interest it received as an origination fee to the new Investor via assignment or
14 continue to hold it for its own account.

15 41. Under its servicing contract, USACM was entitled to fees for collecting interest and
16 principal payments from borrowers and distributing them to lenders/Investors.⁵ These fees were to
17 be collected from the borrowers' payments and remitted to USACM. Frequently, however,
18 USACM's servicing revenues in the Collections Trust Account were not disseminated to USACM.
19 As a result, many fees earned by USACM were never even booked as revenue or taken out of the
20 Collections Trust Account. Instead, these fees were used to maintain the Ponzi-like scheme, as
21 discussed below.

22 42. Both the Investors Trust Account and the Collections Trust Account were utilized in
23 the assignment process. USACM would frequently transfer original Investors' interests in loans to
24 new Investors, USACM itself, DTDF, or FTDF when the original Investor wanted out of a loan.

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26 ⁵ In this context, the term "lenders" is sometimes used interchangeably with the term "Investors" inasmuch as these Investors of USACM were intended also to be lenders either directly or indirectly through USACM or the DTDF or FTDF funds.

1 This was generally accomplished by depositing the new funds into the Investors Trust Account,
2 transferring those funds to the Collections Trust Account, and then disseminating the funds to the
3 original Investor. Upon information and belief, the funds used to buy out USACM's interest in
4 loans were not always withdrawn from the Collections Trust Account, but instead were used in the
5 Culpable Insiders' scheme.

6 43. The Culpable Insiders commingled funds belonging to USACM, the Investors Trust
7 Account, and the Collections Trust Account for use in their Ponzi-like scheme. At least as early as
8 2000, USACM and/or Investors Trust Account funds were transferred to the Collections Trust
9 Account where the funds were combined with Investors' funds and USACM fees that were not
10 withdrawn from the Collections Trust Account. These funds were then utilized in the Culpable
11 Insiders' fraudulent schemes and eventually made it into the hands of certain Investors in connection
12 with prepayments on defaulted loans.

13 **(2) The Basic Ponzi-like Scheme**

14 44. The Culpable Insiders routinely disregarded the Nevada regulatory framework for
15 loan servicing. The Culpable Insiders misappropriated USACM's service fees and funds in the
16 Collections Trust Account and USACM's operating account for their own purposes. These funds
17 were regularly used to disguise loans that were either in default or had been taken over by USACM
18 or its affiliates. This activity ensured the Culpable Insiders additional future cash flows from
19 Investors, as it allowed the Culpable Insiders to continue to claim that no Investor had ever failed to
20 receive any interest or principal payments. Exclusively adverse to the interests of USACM, this
21 enabled the Culpable Insiders to continue to use USACM as a source of funds for their independent
22 ventures.

23 45. The Culpable Insiders commingled funds within the USACM Collections Trust
24 Account. Specifically, payments made by borrowers on performing loans (the "Diverted
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1 Principal”)⁶ were used in conjunction with USACM’s servicing fees, USACM operating funds,
2 funds due to USACM from assignments, and Investor funds to make interest payments to Investors
3 on non-performing and defaulted loans. As an additional method of ensuring that the Collections
4 Trust had sufficient funds to make these “prepayments” to investors on non-performing and
5 defaulted loans, the Culpable Insiders failed to deposit checks for interest and principal made
6 payable to DTDF from the Collections Trust Account (the “Held Checks”).⁷ The net result was that
7 USACM made payments to Investors on the borrowers’ behalf where USACM had no obligation to
8 do so.

9 46. The next crucial aspect of the scheme was to ensure that all Investors were paid off.
10 This presented a difficult problem in the case of loans made to borrowers that were unable to pay the
11 loan at maturity and where the underlying collateral was insufficient to pay off the loan obligation.
12 In those instances, the Culpable Insiders stepped in and “paid off” the loan by having USACM take
13 it over or to originate a new loan through what amounted to a refinancing. When Investors in those
14 loans sought to withdraw their funds, USACM would simply fund that request by drawing funds
15 from one of the above accounts.

16 47. These prepaid interest payments and loan payoffs were completely adverse to
17 USACM’s interests. USACM had no financial obligation to Investors for these payments, though
18 USACM had the duty to inform Investors of non-performance or default. To the extent that
19 USACM used its own operating funds to fund principal and interest payments, USACM suffered
20 losses for which it received no benefit. In addition, these payments exposed USACM to an ever-
21 increasing liability to Investors whose funds were commingled and misappropriated by the Culpable
22 Insiders in order to make payments on behalf of defaulting borrowers to other Investors.

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25 ⁶ Mesirow Financial Interim Management, LLC (“MFIM”) estimated that from January 1, 2004 onward, there was
26 approximately \$26 million of Diverted Principal. The Diverted Principal was used with other sources of funds (as
described above) to fund the “pre-payment” aspects of the Ponzi-like scheme.

⁷ For example, as of the end of 2004, there was approximately \$19 million worth of Held Checks.

1 48. The Culpable Insiders set up USACM's loan servicing department to cut checks to
2 Investors on a fixed date each month, regardless of whether or not the borrowers made payment on
3 their obligations to the Collections Trust Account. For certain loans, this meant that the accounting
4 system cut checks to Investors prior to the date that the borrowers made, or were required to make,
5 their monthly payments. As such, some Investors were paid before it could even be determined if
6 the underlying loan or loans were performing. There were no checks and balances in USACM's
7 loan servicing department or elsewhere to determine if interest was ever improperly paid. This
8 system was designed to ensure that no direct lender missed an interest payment, which was
9 consistent with the marketing employed by the Culpable Insiders—No Investor has ever failed to
10 receive a scheduled payment.

11 49. Predictably, the Ponzi-like scheme eventually ended. Years of using “new”
12 Investors' money and USACM's funds to make payments on behalf of defaulting borrowers to
13 “old” Investors created millions of dollars of shortfalls and directly contributed to the collapse of
14 USACM in April 2006. Had this Ponzi-like scheme been exposed and stopped earlier, USACM
15 would have avoided millions of dollars in losses.

16 **(3) Additional Facets of the Scheme**

17 50. In addition to their misuse of the Investors Trust Account and the Collections Trust
18 Account, the Culpable Insiders employed several other methods to ensure that Investors on non-
19 performing loans were repaid. A standard tactic to repay principal was to direct USACM to buy out
20 Investors in a non-performing loan through assignments.⁸ In these types of assignments, an Investor
21 would be replaced in a given loan by having USACM return the Investor's principal in exchange for
22 the Investor's legal rights in the loan. Thus, USACM would take the place of the Investor for all
23 intents and purposes. USACM had no obligation to make such assignments or to take the place of
24 any Investor in a loan. These assignments were harmful to USACM, as the assignments were
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26 ⁸ In some instances, the Culpable Insiders also directed either DTDF or FTDF to participate in assignments to remove Investors from non-performing loans.

1 related to bad loans, and represented squandering of USACM's assets and/or the assumption of
2 liabilities that USACM never had to begin with.

3 51. The Culpable Insiders also created new entities, funded by USACM, for the purpose
4 of paying interest on behalf of defaulting borrowers. For example, the Culpable Insiders created
5 Housing Partners, LLC ("Housing Partners"), owned and managed by the Culpable Insiders, for the
6 purpose of paying interest on behalf of American Communities, LLC ("American Communities"),
7 as well as a vehicle to own numerous other real estate ventures with the Tanamera (Southern
8 California) framework. Money taken from USACM was passed through Housing Partners to pay
9 interest due from several non-performing American Communities loans. The formation of these
10 entities did nothing to benefit USACM, as the Culpable Insiders held the upside of the transactions
11 while USACM absorbed the risk.

12
13 **C. THE PONZI-LIKE SCHEME FACILITATED HANTGES' SELF-DEALING AND
14 LOOTING OF USACM**

15 52. The Culpable Insiders structured and operated the Ponzi-like scheme so that
16 USACM could generate funds that the Culpable Insiders could squander for their own personal
17 benefit while subjecting USACM to hundreds of millions of dollars in liabilities. Upon information
18 and belief, Hantges benefited personally from the operation of this Ponzi-like scheme.

19 53. The Ponzi-like scheme allowed the Culpable Insiders to claim that no Investor ever
20 failed to receive a payment, thereby enabling them to secure Investors willing to invest millions of
21 dollars in FTDF, DTDF, and in loans originated and serviced by USACM. With the intent to
22 deceive, the Culpable Insiders intentionally used the millions of dollars placed in their confidence
23 along with the revenues from the above-described transactions: (a) to fund real estate developments
24 in which the Culpable Insiders stood to profit; and (b) to satisfy the cash needs of other business
25 ventures which they owned or operated.
26

1 **(1) USAIP Usurped Corporate Opportunities that Rightfully Belonged to**
2 **USACM.**

3 54. Hantges held a fifty-seven percent (57%) membership interest in USAIP from the
4 moment of its inception on November 1, 1999.⁹ This membership interest entitled him to receive
5 distributions of profits earned by USAIP under the terms of USAIP's operating agreement. Hantges
6 also served as co-manager of USAIP along with Milanowski from June 17, 2004 to February 14,
7 2005.¹⁰ Hantges was involved not only in the ownership, but also the operation and management of
8 USAIP.

9 55. Culpable Insiders used USAIP to usurp corporate opportunities available to
10 USACM as a loan originator. For example, in consideration for its loan origination services,
11 USACM was sometimes afforded the opportunity to participate in a loan transaction by receiving an
12 equity interest in the borrowing entity. In many instances, Culpable Insiders demanded that
13 borrower/developers convey interests in their real estate projects, through membership in the
14 borrowing entity, to USAIP even though USAIP performed no services related to the origination or
15 servicing of the loan.

16 56. Several examples where Culpable Insiders directed such "kick-backs" to USAIP
17 include: Boise/Gowen 93, LLC; Copper Sage Commerce Center, LLC; Freeway 101 USA
18 Investors, LLC; Beau Rivage- Homes for America, LLC; and Aware TM 30850. Thus, USACM
19 did not receive anything in exchange for originating loans to these entities. In each instance,
20 USAIP, rather than USACM, received the profit distributions from these entities. These and other
21 similar distributions are believed to be in excess of \$10 million.

22 57. Upon information and belief, Hantges intentionally caused USAIP to usurp
23 corporate opportunities (like these and others) from USACM in order benefit personally through his
24 ownership interest in USAIP.

25 ⁹ Initially Hantges' interest in USAIP was held personally. He later assigned the interest to Thomas A. Hantges,
26 Trustee of the Thomas A. Hantges 1997 Trust.

¹⁰ USACM was the manager of USAIP from its inception until June 2004.

1
2 **(2) The Culpable Insiders Looted and/or Misappropriated Money from USACM**
3 **to Fund Their Real Estate Projects**

4 58. The Culpable Insiders utilized USACM and Collections Trust Account funds to
5 gain, increase, or otherwise fund its equity interests in entities that borrowed money through
6 USACM-originated loans. The Culpable Insiders systematically looted and/or misappropriated
7 money from USACM and the Collections Trust Account and funneled it to USAIP and its affiliates.
8 In turn, USAIP used this money to buy equity interests in entities that borrowed money through
9 USACM loans. Where funds were taken from the Collections Trust Account, it is practically, if not
10 wholly, impossible to clearly identify the source of these funds. USACM servicing fees and
11 operating funds were commingled with borrower repayments in the Collections Trust Account and
12 with funds from the Investors Trust Account and other USACM affiliates. As stated above, these
13 funds were used by the Culpable Insiders for their own purposes exclusively adverse to the interests
14 of USACM.

15 59. In the aggregate, the Culpable Insiders looted and/or misappropriated millions of
16 dollars to fund these real estate development entities and projects in which USAIP held an equity
17 interest. Transfers from USACM and the Collections Trust Account to USAIP continued up until
18 the time that USACM ultimately filed for bankruptcy in April 2006. Although USACM funds were
19 used for many of USAIP's projects, USACM received no benefit as USAIP did not pay interest on
20 the loans or share any profits with USACM.

21 60. Upon information and belief, Hantges intentionally misappropriated and looted
22 USACM's funds through USAIP and other entities owned and/or managed by him in order to fund
23 various real estate ventures in which he stood to benefit personally.
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1 **(3) The Culpable Insiders Looted and/or Misappropriated Funds from USACM**
2 **to Fund Other Side Ventures**

3 61. In addition to real estate ventures, the Culpable Insiders looted and/or
4 misappropriated funds for use in other business ventures, for which USACM received no benefit.
5 The recipients of looted and/or misappropriated funds included time-share hotels (such as the Royal
6 Hotel and Casino and the Hotel Zoso) and technology companies (such as Redundant Networks,
7 LLC, Vegas Hot Spots, LLC,¹¹ (“VHS”) and Twelve Horses North America, LLC (“Twelve
8 Horses”)).

9 62. The looting occurred both directly from USACM and indirectly through USAIP and
10 its affiliates. In some instances, funds were taken directly from USACM and the Collections Trust
11 Account and sent to these entities. Additional money was looted and/or misappropriated using
12 USAIP as an intermediary. In either case, these transfers did not benefit USACM.

13 63. USAIP held a membership interest in virtually every one of these entities. This
14 entitled to USAIP to a share of any profits that these entities earned. In turn, Hantges would then
15 have been entitled to receive a portion of USAIP’s profits by virtue of his 57% interest in USAIP.

16 64. Upon information and belief, Hantges intentionally misappropriated and looted
17 USACM’s funds through USAIP and other entities owned and/or managed by him to fund various
18 side ventures in which he stood to benefit personally.

19 **(4) The Culpable Insiders Looted and/or Misappropriated Funds from USACM**
20 **to Pay USAIP’s Obligations**

21 65. The Culpable Insiders also took money from USACM and the Collections Trust
22 Account to pay USAIP’s obligations to third parties. In 2004, for example, the Culpable Insiders
23 took more than \$3 million from the USACM operating account and the Collections Trust Account
24 to repay a \$5 million loan that USAIP had obtained from a third party. In addition, the Culpable
25

26

¹¹ VHS has recently shut down, with the filing of a chapter 7 bankruptcy proceeding, case no. 07-15802-lbr.

1 Insiders looted and/or misappropriated hundreds of thousands of dollars from USACM and the
2 Collections Trust Account to make USAIP's monthly interest payments to third parties.

3 66. This pattern of using USACM's assets to pay USAIP obligations continued virtually
4 up until the time of bankruptcy. On March 8, 2006, Milanowski directed that \$6 million be
5 transferred from USACM to USAIP, and that \$4 million of that transfer was to be used to repay a
6 loan to USAIP that was facilitated by J.M.K. Investments Ltd.¹²

7 67. These payments were completely adverse to USACM's interests. USACM owed no
8 obligation, and received no benefit for the money provided to USAIP. The Culpable Insiders did
9 not charge and/or collect interest on these transfers, thereby precluding USACM from using this
10 money in legitimate investments. In the aggregate, USACM transferred at least \$58 million to
11 USAIP to fund USAIP's investments and pay its obligations.¹³ The Culpable Insiders' fraudulent
12 intent in looting USACM for USAIP's benefit, is reflected in the fact that USAIP gave USACM a
13 secured note for \$58 million during the bankruptcy case. USAIP's failure to repay the transfers and
14 its ultimate bankruptcy has prevented any possibility of USACM fully recovering on account of the
15 \$58 million that the Culpable Insiders looted from USACM for the benefit of USAIP (and
16 ultimately themselves).

17 68. Upon information and belief, Hantges intentionally misappropriated and looted
18 USACM's funds through USAIP to reduce his personal liability and the liabilities of USAIP. Thus,
19 Hantges benefited from these transactions both directly and indirectly by the improvement of
20 USAIP's financial condition and the reduction of his personal guaranty liability.

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¹² This repayment is the subject of other litigation currently pending in the Bankruptcy Court.

26 ¹³ The \$58 million is in part or in whole reflected in the note between USACM and USAIP dated May 15, 2006. The bankruptcy court approved the note by order dated July 24, 2006 (Docket No. 946).

1 **(5) The Culpable Insiders Looted and/or Misappropriated Assets from USACM**
2 **for Their Personal Benefit.**

3 69. In addition to using USACM as a source of funding for their side business ventures,
4 the Culpable Insiders looted and/or misappropriated USACM funds and usurped opportunities
5 available to USACM in other ways. For example, Inco entered into a Placement Agreement with
6 USACM that provided that Inco would execute a promissory note for \$347,500 payable to the
7 Culpable Insiders “as assignee of USA Commercial Mortgage Company” in exchange for USACM
8 arranging a \$2.45 million loan. In another instance, Milanowski directed USACM to transfer \$2.8
9 million to USAIP on March 13, 2006 in order to make a partial repayment on a personal loan made
10 from Salvatore Reale to the Culpable Insiders.

11 70. The Culpable Insiders also arranged to receive personal payments out of actual loan
12 proceeds. For example, the Culpable Insiders forced American Communities to purchase 229,121
13 shares of Inco stock, owned by the Culpable Insiders, using a portion of the loan proceeds from the
14 April 1999, \$5 million “Working Capital” loan to American Communities. The purchase price in
15 this agreement of \$3.00 per share exceeded the highest closing price for Inco in the previous month
16 by \$0.50, meaning that the Culpable Insiders stood to gain approximately \$100,000 from the sale.
17 They also benefited by unloading their Inco stock before Inco’s collapse just a few months later.

18 71. The Culpable Insiders usurped USACM’s business opportunities. USACM
19 originated certain loans on the condition that the Culpable Insiders receive an equity interest in the
20 borrowing entity. Usually, this equity interest went to USAIP or some other related party owned
21 and controlled by the Culpable Insiders, rather than to USACM. These usurpations deprived
22 USACM of millions of dollars in profits. This was improper since the equity interest was provided
23 to the Culpable Insiders based on the loan’s origination, and was thus the fruit of USACM’s efforts.

24 72. The Culpable Insiders also used USACM as a personal, interest-free revolving credit
25 line. USACM funds were repeatedly transferred to the Culpable Insiders without any supporting
26

1 documentation, but were merely booked as an account receivable. Some of these receivables
2 remain outstanding today.

3 73. Upon information and belief, Hantges intentionally misappropriated and looted
4 USACM's funds directly for personal gain.

5 **V. CAUSES OF ACTION**

6 **FIRST CLAIM FOR RELIEF**

7 **11 U.S.C. § 523(a)(2)**

8 74. The Trust re-alleges and fully incorporates the allegations pleaded above.

9 75. As one of the Culpable Insiders, Hantges was either directly or indirectly involved in
10 the fraudulent conduct described herein. Hantges served as an officer and director of USACM and
11 therefore played a key role in the fraudulent transactions described herein. As an officer and
12 director of USACM, Hantges owed a fiduciary duty to act at all times with the utmost good faith
13 and fair dealing and in the best interests of USACM. Moreover, Hantges owed fiduciary duties to
14 USACM's creditors at such time as USACM entered the zone of insolvency, which was followed
15 quickly by a state of actual insolvency.

16 76. As a director and an officer of USACM, Hantges breached his fiduciary duties and is
17 liable to the Trust for: (i) commingling Investors' monies and USACM's monies and using them to
18 perpetuate the fraudulent scheme described herein; (ii) intentionally concealing delinquent and
19 defaulted loans in order to deceive and induce Investors to provide additional capital to fund the
20 fraudulent scheme; (iii) consistently looting USACM's funds and using them to fund USAIP and
21 other non-USACM ventures in which he stood to benefit personally; (iv) usurping USACM's
22 corporate opportunities to earn fees and/or the conveyance of back-end interests in real estate deals
23 to USAIP; and (v) engaging in a fraud that allowed him to systematically loot USACM for his own
24 personal benefit.

25 77. Put simply, Hantges employed a pervasive Ponzi-like scheme in order to fund non-
26 USACM side ventures in which he stood to profit personally and to conceal his colossal looting of

1 USACM for personal gain. As described above, Hantges' actively and knowingly concealed his
2 fraudulent conduct through material false statements, misrepresentations and omissions.

3 78. Hantges knowingly made such false statements, misrepresentations and omissions in
4 order to deceive USACM, its Stakeholders, and Investors regarding USACM's financial condition
5 and to induce Investors to continue to provide millions of dollars to fund his fraudulent and self-
6 serving scheme.

7 79. USACM, its Stakeholders, and Investors justifiably relied on Hantges' false
8 statements, misrepresentations, and omissions. Moreover, Hantges' false statements and other
9 fraudulent conduct proximately caused the losses suffered by USACM, its Stakeholders, and
10 Investors.

11 80. Hantges' liability to the Trust arises from transactions in which he obtained money,
12 property, and credit by false pretenses, false representations, and actual fraud. For the foregoing
13 reasons, Hantges' liability to the Trust, in an amount to determined, is not dischargeable under 11
14 U.S.C. § 523 (a)(2)(A).

15
16 **SECOND CLAIM FOR RELIEF**
17 **11 U.S.C. § 523(a)(6)**

18 81. The Trust re-alleges and fully incorporates the allegations pleaded above.

19 82. Hantges' actively and knowingly concealed his fraudulent conduct through material
20 false statements, misrepresentations and omissions.

21 83. In doing so, Hantges willfully and maliciously injured USACM, its Stakeholders,
22 and Investors. Indeed, the fraudulent scheme was designed and perpetuated by Culpable Insiders in
23 order to benefit him (and others) personally.

24 84. As an officer and director of USACM, Hantges' was aware that his fraudulent
25 conduct would cause harm or that there was a substantial certainty that harm would result. As such,
26 Hantges intended, through his fraudulent conduct, to cause such harm.

1 85. Hantges' acted deliberately, intentionally, wrongfully and without just cause and
2 excuse. To their detriment, USACM, its Stakeholders, and Investors justifiably relied on Hantges'
3 material false statements, misrepresentations and omissions. Hantges' malicious and willful
4 fraudulent conduct proximately caused the losses suffered by USACM, its Stakeholders, and
5 Investors, in an amount to be determined at trial.

6 86. Hantges' liability to the Trust arises from transactions in which he willfully and
7 maliciously injured USACM, its Stakeholders, and Investors and/or their property. For the
8 foregoing reasons, Hantges' liability to the Trust, in an amount to determined, is not dischargeable
9 under 11 U.S.C. § 523 (a)(6).

10 **PRAYER**

11 WHEREFORE, the Trust respectfully requests that the Court enter judgment against
12 Hantges as follows:

- 13 (a) declaring that Hantges' indebtedness to the Trust, in an amount to be determined, is a
14 non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(2)(A) and/or (6);
15 (b) granting a non-dischargeable judgment in favor of the Trust against Hantges, in an
16 amount to be determined, including without limitation, pre-judgment and post-
17 judgment interest as provided by law, reasonable attorneys' fees, costs and expenses;
18 and
19 (c) granting the Trust any other and further relief to which it may be entitled.
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21 Dated: February 11, 2008.
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