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12 Attorneys for Plaintiffs

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

15 LLOYD CHARTON, as Trustee on behalf of the  
16 Lloyd and Stella Charton 1999 Trust, ROBERT  
17 COVENEY, as Trustee on behalf of the Robert A.  
18 Coveney Family Trust dated August 31, 1982, SID  
19 LOUIE and JESSICA LOUIE as Trustees on behalf  
20 of the, Sid K. and Jessica M. Louie Lifetime Trust,  
21 dated October 21, 1988; KENT AZAREN;  
22 VINCENT BAUERLEIN; MARGARET  
23 BAUERLEIN; JOHN R. and MONICA R.  
24 BAYLESS as Co-Trustees of the Bayless  
25 Declaration of Trust dated September 24, 1991;  
26 SAMI BELLER as Trustee of the Beller Family  
27 Trust of 1978 and as Trustee of the Beller  
28 Charitable Unitrust; GAYL BELLER, as Trustee of  
the Foresman Family Legacy Trust; JOHN  
EDWARD BELT and KAREN BELT as Trustees  
of the John Edward and Karen Belt Trust dated  
April 12, 1990; THOMAS F. BEREAN as Trustee  
of the Thomas F. Berean Living Trust; KATHRYN  
BERKOWITZ and AL HECHINGER as Co-  
Trustees of the Kathryn and Albert Family Trust;  
BRADLEY BERKOWITZ; LESLIE and EVELYN  
CORZBERG; ERIK CORZBERG; JOHN G. FRY  
as Trustee of the John G. Fry and Mary Kay Fry  
Trust; ROBERT W. GARBER, JR., and ANA I.  
GARBER; KATHRYN SUE GARRICK,  
EDWARD N. GOMBERG as Trustee of the  
Edward N. Gomberg and Helen E. Gomberg  
Revocable Trust; JIM HAIDUCK; TERRY HOLDT  
and SHARON HOLDT as Trustees of the Holdt

Case No. 30-2008 00114401

Judge Daniel J. Didier  
Dept. C20

Original Complaint filed: November 6, 2008  
Trial date: None set

**FIRST AMENDED COMPLAINT FOR:**

- 1) **BREACH OF FIDUCIARY DUTY;**
- 2) **BREACH OF OPERATING AGREEMENT;**
- 3) **NEGLIGENT MISREPRESENTATION;**
- 4) **INTENTIONAL MISREPRESENTATION;**
- 5) **FRAUDULENT CONVEYANCE;**
- 6) **RESCISSION;**
- 7) **FAILURE TO PRODUCE RECORDS PURSUANT TO CORPORATIONS CODE SECTION 17106 SUBSECTIONS (a) AND (b);**
- 8) **UNFAIR BUSINESS PRACTICES (B&P CODE § 17200 et seq.);**
- 9) **CALIFORNIA INTRA-STATE SECURITIES LAWS VIOLATIONS;**
- 10) **DECLARATORY RELIEF.**

1 Living Trust; DAVID KENNEDY and JANICE  
2 KENNEDY, individually and as Trustees of the  
3 Kennedy Family Trust; KEVIN KRASNER;  
4 KIMBERLEE KRASNER; PAUL KRASNER,  
5 M.D. Defined Benefit Pension Plan & Trust;  
6 NEPHROLOGY MEDICAL GROUP, INC.  
7 PSPRT; DANIEL K. LARSON and ERIN  
8 LARSON as Trustees of the Larson Family Trust  
9 dated October 7, 1991; CHERYL LICHT; JOHN A.  
10 NORD and MARY NORD, individually and as  
11 Trustees of the Nord Family Trust; ROBERT M.  
12 PEPPERCORN, M.D.; CANDY PEREZ; D. MAX  
13 PERRY and MARY K. PERRY as Trustee of the  
14 Adler Creek Family Trust; GARY S. REID;  
15 CLAUDINE E. REID; DAVID SHORE, Trustee of  
16 the Shore Revocable Trust of 1996; GEOFFREY C.  
17 SIODMAK; JUDY A. SIODMAK; ISAAC  
18 SOFFER individually and as Trustee of the Isaac  
19 and Delores Soffer Living Trust; DANIEL J.  
20 SULLIVAN; DONNA WALL; ROBERT L.  
21 WELLS and WANDA WELLS, Trustees of the  
22 Robert L. Wells Trust; PETER ZOSCHAK, JR.,

23 Plaintiffs,

24 vs.

25 NATIONAL FINANCIAL LENDING, LLC, a  
26 California limited liability company; POINT  
27 CENTER FINANCIAL, INC., a California  
28 corporation; DAN HARKEY, an individual;  
DIANE L. HARKEY, an individual; M. GWEN  
MELANSON, and DOES 1-150, inclusive,

Defendants.

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1 **I. INTRODUCTORY GENERAL ALLEGATIONS.**

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3 **A. Gist Of This Action.**

4  
5 This action seeks basic justice and retribution for the innocent plaintiff investors, all of whom  
6 were bamboozled and lured by Dan Harkey – the self proclaimed “Godfather of Trust Deed  
7 Investments” – to safeguard with him and his companies multiple millions of dollars of hard earned  
8 income, savings and retirement funds into what were professed to be “secure” mortgage investment  
9 vehicles. In fact, the Harkey Scheme was nothing but a slick and carefully conceived fraud and hoax,  
10 designed primarily to feed Harkey’s and his family’s high end and high profile lifestyle with the hope  
11 the economy would allow the cloak of the ersatz plot to continue to masquerade his scheme long  
12 enough to dupe the Investors into a permanent sense of repose and inaction. While unfortunately this  
13 charade “worked” for awhile, it was finally and ultimately undressed by the economic meltdown  
14 starting in 2007. The sordid picture revealed is what is addressed herein: a slickly designed plot to  
15 enrich Harkey and the other defendants with innocent investor monies, which plot included all of the  
16 classic elements of deceit:

- 17  
18 • investment vehicles which necessarily required “old” investors to be paid by  
19 “new” investment monies – classic Ponzi vehicles but craftily disguised until  
20 now;
- 21  
22 • a plot to collect huge and unlawful fees which were never lawfully revealed to the  
23 investors, but which were secretly essential to feeding the Harkey Scheme; and
- 24  
25 • time and time again a “down and dirty” pattern of shocking “garden variety  
26 fraud” – luring investment monies via blatant misrepresentations and  
27 nondisclosures of material facts.
- 28

1 Dan Harkey and the other Defendants were and are fiduciaries of the Investor Plaintiffs – it was  
2 wrong for them to defraud and take undue advantage of their beneficiaries. This action seeks justice  
3 and redress for such wrongdoing.  
4

5 **B. Background Allegations.**  
6

7 1. Investor Plaintiffs were lured by Defendants Point Center Financial and Dan Harkey (on  
8 information and belief Point Center’s president, CEO, and principal shareholder) into investing over  
9 \$16.5 million dollars to acquire interests in what were promised to be “secure” mortgage investment  
10 vehicles offered by Defendant Point Center Financial which all now have turned out to be relatively  
11 “worthless,” due to mismanagement, defalcations by Defendants, misappropriation and misuse of  
12 investor funds and other misconduct.

13 2. Point Center, at one time was (but is no longer) licensed by the State of California  
14 Department of Corporations and Department of Real Estate to fund loans, had sole and exclusive  
15 management and control of each of the loan vehicles it offered Investor Plaintiffs.

16 3. Point Center has consistently paid itself handsome but unreasonable loan origination  
17 and processing fees and annual management fees, yet, on information and belief, without forewarning,  
18 over 85% of the loans (by dollar volume) originated by Point Center on behalf of the Plaintiff Investors  
19 and other nonparties are currently in default, foreclosure, or REO.

20 4. Despite repeated requests, none of the Investor Plaintiffs have ever received proper  
21 documentation or adequate accountings by Point Center which support or justify the massive fees  
22 appropriated by Defendants and/or their affiliates.

23 5. Beginning in 2000 and continuing thereafter, in reliance on Defendants Point Center  
24 and Dan Harkey’s extensive written and oral promises and assurances of average rates of return on  
25 investments of 10% or greater, Plaintiff Investors each invested between \$50,000 and \$1.5 million in  
26 Point Center’s investment vehicles. Many of the investments were the hard earned entire life savings  
27 of many of the Investor Plaintiffs, including their IRA, 401k and pension plans.

28 6. Through slick print ads and direct mailings, carefully crafted public offering circulars,

1 sophisticated marketing materials and well choreographed "invitation only" seminars, intended to  
2 appeal to each potential investors' stated desire for "safe and diversified investment portfolios,"  
3 Harkey and Point Center cultivated an atmosphere of confidence and trust founded on Point Center's  
4 self-proclaimed "proven" track record and commitment to responsible and conservative investments.  
5 Indeed, Harkey regularly advised investors that "no one had ever lost money on a first trust deed he  
6 had arranged."

7         7.         During at least one of the "invitation only" seminars conducted by Harkey and Gwen  
8 Melanson (Point Center's Secretary and CFO) for purposes of inducing members of the public to  
9 invest in Point Center's mortgage backed loan offerings, and attended by several of the Plaintiff  
10 Investors, Harkey assured potential investors no less than six times that that the investments offered by  
11 and managed by Point Center, were completely safe and non-risky because Point Center has, "an  
12 absolute obligation to pay that [the investor's] money back, disregarding the asset" and that "[Point  
13 Center] has an absolute obligation under our license to pay it back, absolute obligation to pay  
14 investor[s] back". This seminar was recorded both visually and audibly and distributed to other  
15 Investor Plaintiffs via a DVD entitled "Successful Trust Deed Investments." While many of the  
16 Investor Plaintiffs have requested their "money back" time and time again, Defendants have steadfastly  
17 refused and then boldly announced that, in lieu, they would increase the already unreasonable  
18 management fees.

19         8.         This pledge or "guaranty" of repayment was frequently repeated in written materials  
20 distributed to members of the public including Investor Plaintiffs; for e.g.: "Additionally, [Point  
21 Center] as a corporation, has an absolute obligation to repay the investors principal and interest  
22 regardless of the success of the loans in the collateral pool."

23         9.         Enticed by and in reliance on Harkey and Point Center's written and oral affirmations of  
24 Point Center's expertise as a finance lender licensed by the State of California and well versed in  
25 making loans to the general public and soliciting and acquiring existing loans all secured by deeds of  
26 trust and mortgages on real estate located throughout the United States, each of the Plaintiffs,  
27 individually or in their capacities as trustees of family trusts or beneficiaries of roll-over retirement  
28 plans, were encouraged to invest in mortgage investment pools ("Mortgage Pools") and a variety of

1 shared trust deed investments (“Shared Trust Deeds”) and participating trust deeds investments  
2 (“Participating Trust Deeds”) exclusively offered by Defendant Point Center.

3 10. The Mortgage Pools were exclusively managed by Dan Harkey on behalf of Point  
4 Center, who had complete control over the selection and management of multiple trust deed  
5 investments on behalf of the Pool investors of up to \$250,000,000 in overall value, choosing the loans  
6 and terms for repayment without input from the investors. Participants in this investment scenario  
7 were advised by Harkey and Point Center that they would not need to conduct their own due diligence  
8 because each could rely on Harkey and Point Center’s integrity and far greater level of experience and  
9 expertise.

10 11. The Mortgage Pools were touted by Harkey and Point Center as safe investments  
11 because the “anticipated loan portfolio” would be limited primarily to construction and non  
12 construction loans on commercial and residential properties, secured by first trust deeds (90%) with  
13 70-75% loan to value ratios; or, secondarily, to non construction loans on commercial properties (or  
14 occasionally residential properties) secured by second trust deeds (10%) with a 65% loan to value  
15 ratio. Occasionally, the portfolio might include loans on unimproved properties secured by first trust  
16 deeds only, with a loan to value ratio of 50-65%, and such value was touted to be the “quick sale/as is”  
17 value of the real estate security. Attached in the accompanying Compendium as Exhibit “A” is a true  
18 and correct copy of the initial NFL Mortgage Pool Offering Circular dated April 15, 2002.

19 12. Intended to garner a sense of security, offering circulars distributed by Point Center by  
20 mail to potential investors purportedly espoused the following “conservative” criteria for Mortgage  
21 Pool underwriting decisions by Point Center with respect to raw and unimproved land:

22  
23 “Loans invested in by us may be made for purchase or development of raw,  
24 unimproved land. Generally, we determine whether to invest in these loans based upon  
25 the 90-day quick sale value of the property and the borrower’s actual capital investment  
26 in the property. The ‘90-day quick sale value’ is the highest price for which the land  
27 could actually be sold within the next 90 days, as determined by local real estate  
28 brokers. We believe this 90-day period approximates the time required for a

1 foreclosure. The value is generally the same as the cost of the land to the borrower.  
2 Typically, we will invest in loans with a face value which is less than 60% of the '90-  
3 day quick sale value', and we usually require that the borrower have invested in the  
4 property actual capital expenditures of at least 20% of the property's value."

5 Attached in the accompanying Compendium as Exhibit "B" is a true and correct copy of the offering  
6 circular for Point Center Mortgage Fund, I, LLC dated February 3, 2006.

7 13. In further interest of "safe investments" Point Center purportedly employed the  
8 following underwriting criteria with respect to acquisition and development loans:

9  
10 "Loans invested in by us may be acquisition and development loans. These loans  
11 enable borrowers to complete the basic infrastructure and development of their property  
12 prior to the construction of buildings or structures. .... Generally we will invest in  
13 loans with a face value of approximately 70% of the anticipated post-development  
14 appraised value."

15 *See id.*

16 14. Shared Trust Deeds were handled differently, and initiated by a "loan summary"  
17 describing the project, the borrower and the basic terms of the loan. Interested investors were  
18 furnished with a "due diligence" package that included a loan summary, borrower information and  
19 credit report, an "independent" appraisal, loan and escrow documents and a title report among other  
20 relevant documents.

21 15. The Mortgage Pool agreements did not specifically prohibit Harkey and Point Center  
22 from causing any of the Mortgage Pools they managed to invest in these Shared Trust Deeds even  
23 though Pool Investors were not provided loan summaries or "due diligence" packages, and  
24 notwithstanding any individual Pool Investor's rejection of a Shared Trust Deed investment as "too  
25 risky," Harkey would make the loan anyway so as to collect huge off the top advance fees regardless of  
26 the potential for failure of the loan.

27 16. Participating Trust Deeds were similar to Shared Trust Deeds except investors were  
28 required to invest a set minimum sum and would receive a fixed rate of return plus profit participation

1 trumpeted to be at least 20%, conditioned on the successful build-out of the project and profit  
2 realization.

3 17. Point Center received fees as Manager of the various investment vehicles described  
4 herein including, but not limited to any or all of: (1) loan brokerage commissions; (2) loan processing  
5 fees; (3) escrow fees; (4) real estate commissions; (5) loan servicing fees (including monthly fees, late  
6 charges and prepayment penalties); and, (6) foreclosure fees. Each of these was determined as a  
7 separate percentage of the principal amount of the loan. Point Center (via Harkey and others)  
8 promised no fees were to be charged once any loans went into "default."

9 18. Initially, all Investor Plaintiffs received positive reports on the status of their  
10 investments.

11 19. Beginning in approximately 2007 and intensifying over time, however Plaintiffs  
12 Investors began to discover certain facts not previously known or knowable to them suggesting that  
13 that all of their current investments in the Mortgage Pools, Shared Deeds of Trust and Participating  
14 Deeds of Trust were in very serious jeopardy, and that the many representations by Defendants that  
15 induced their investments, and induced their maintaining their investments, were false.

16 20. As a result of Plaintiffs Investor's further and ongoing investigation, Plaintiffs are  
17 informed and believe that Point Center and Harkey have systematically failed to comply with the  
18 lending criteria required under the Mortgage Pool operating agreements and offering circulars, the  
19 Shared and Participating Trust Deed agreements, and as promised and assured repeatedly at each of  
20 Harkey and Point Center's seminars, and in Harkey's personal communications with Plaintiff Investors  
21 and in Harkey's books, DVDs and pamphlets regarding safe trust deed investments.

22 21. On information and belief Harkey and Point Center have intentionally, recklessly and  
23 knowingly engaged in a pattern of conduct designed to induce Plaintiff Investors and others to  
24 unknowingly invest in high risk loans far outside the loan to value ratios disclosed in the operating  
25 agreements and other written and oral communications by Defendants, for purposes of generating loan  
26 origination fees and management fees for the benefit of Defendants, including Harkey's wife, Diane L.  
27 Harkey (an employee of Point Center during relevant times in question with, on information and belief,  
28 an income of nearly \$1 million dollars during a three year period).