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 Richard A. Jefferson

**UNITED STATES DISTRICT COURT
 FOR THE
 DISTRICT OF ARIZONA**

WESTERN ALLIANCE BANK, an Arizona
 corporation,

Plaintiff,

v.

RICHARD JEFFERSON, an individual man,
 Defendant.

RICHARD JEFFERSON, an individual man,
 Counterclaimant,

v.

WESTERN ALLIANCE BANK, an Arizona
 corporation

Counter-Defendant.

Case No.: 2:14-cv-00761-JWS

THIRD-PARTY COMPLAINT

1 RICHARD JEFFERSON, an individual man,
2 Third-Party Plaintiff,
3 v.
4 THEODORE KRITZA, a married man,
5 Third-Party Defendant.
6
7

8 Defendant, Counterclaimant and Third-Party Plaintiff Richard A. Jefferson
9 (“Jefferson”) hereby files this Third-Party Complaint against Third-Party Defendant, Theodore
10 Kritza, an individual, (“Kritza”) and alleges as follows:

11 **JURISDICTION**

12 1. Because this Court had original jurisdiction over the Underlying Complaint
13 based on diversity of citizenship (28 U.S.C., § 1332), the Court may adjudicate the state law
14 claims that are transactionally related to the underlying claims pursuant to 28 U.S.C., §
15 1367(a).

16 2. The Court also has jurisdiction pursuant to 28 U.S.C., §1367(a) of this Third-
17 Party Complaint that is brought under federal Rules of Civil Procedure, Rule 14. The Court
18 further has jurisdiction over the claims against the Third-Party Defendant Theodore Kritza
19 pursuant to Federal Rule of Civil procedure, Rule 18.

20 **VENUE**

21 3. The events or omissions giving rise to Jefferson’s claim occurred in this judicial
22 jurisdiction. Therefore, venue is proper here pursuant to 28 U.S.C. section 1391(b)(2).

23 **PARTIES**

24 4. Jefferson is a single man, and a resident of the State of California. Although he
25 denies any and all liability to Plaintiff Western Alliance Bank, an Arizona Corporation on its
26 complaint in the underlying action, Jefferson incorporates the complaint herein for reference
27 only. Jefferson files this Third-Party complaint to protect, declare and assert his rights in the
28 event that he is held liable to the Plaintiff in the underlying action.

5. Third-Party Plaintiff Jefferson is informed and believes and on that basis alleges that Third-Party Defendant Theodore Kritza, an individual, and on information and belief a married man, is and was, at all relevant times, a resident of Maricopa County in the State of Arizona.

FACTUAL BACKGROUND

6. Jefferson has been named in the underlying complaint in the subject litigation. Jefferson incorporates the complaint herein by reference, for a reference only, and not for the purpose of admitting or denying the allegations contained therein.

7. Plaintiff Western Alliance Bank (“Alliance”) is an Arizona corporation that was formerly known as, or is believed to have been formerly known as, Alliance Bank of Arizona. This action concerns a dispute over whether Jefferson bears liability for the alleged breach of contract allegedly entered into between Jefferson and Alliance, relating to a revolving line of credit (“LOC”) and subsequent documents and issued by Alliance in an amount not to exceed \$500,000 in or about October 5, 2004.

8. Jefferson denies that he signed and delivered all of the documents relating to this alleged LOC, including Exhibits A-K to Appendix to Alliance’s Complaint. Moreover, Jefferson affirmatively believes that Exhibits A-K are forgeries, signed without his consent or authorization by Third-Party Defendant Theodore Kritza.

9. In or about October 2013, Jefferson learned from Alliance about the existence of an outstanding balance on a line of credit of approximately \$500,000 while in the process of purchasing of a residential property in California. At or about that time, Jefferson learned from Alliance that communications relating to the approval, renewal and withdrawal of amounts relating to the LOC had been conducted by and through Kritza, Jefferson’s former business manager over the period of the LOC, approximately 2004-2013.

10. In October 2013, Jefferson confronted Kritza regarding the LOC and amounts owing and due. In doing so, Kritza admitted to Jefferson that he had used LOC funds without Jefferson’s consent or authorization in an amount exceeding \$500,000.

11. In January 2014, Jefferson obtained documents relating to the LOC from

1 Alliance which revealed Jefferson's forged signature, including, but not limited to, Exhibits A-
2 K to Appendix to Alliance's Complaint. At no point in time had Jefferson authorized Kritza to
3 sign Jefferson's signature on these documents. Furthermore, Jefferson did not consent to
4 Kritza's personal use of these amounts owing on the LOC. Jefferson lacks sufficient
5 information to determine whether Jefferson may have received any of the proceeds or benefits,
6 if any, of the LOC, but believes that Kritza received the benefit of the majority of the amounts
7 of the LOC.

8 12. Beginning in or about 2001, Kritza began performing services for Jefferson,
9 including but not limited to services as Jefferson's personal business manager. From 2001
10 until 2013, Kritza performed various tasks, including but not limited to, serving as Jefferson's
11 business manager in charge of Jefferson's day to day affairs, investments and business
12 ventures. In this role, Kritza received authorized access to Jefferson's financial accounts,
13 credit information, and related financial information. But at no point did Jefferson provide his
14 consent as it relates to Kritza's personal and unauthorized use of monies relating to the LOC as
15 alleged by Alliance.

16 13. During the years 2004 to 2013, Kritza concealed from Jefferson that he had
17 unlawfully used, extended and amended the LOC funds. In doing so, Kritza misappropriated
18 the LOC funds for his own personal use and unauthorized use, to which Jefferson has no
19 involvement or ownership interest. During this time period, Kritza renewed and/or caused to
20 renew the LOC and related loan documents alleged by Alliance in its underlying complaint,
21 without Jefferson's consent, and absconded with the amounts unbeknownst to Jefferson.

22 14. As a result of Kritza's acts, Jefferson has suffered damages to be proved at trial,
23 including monetary losses in excess of \$500,000.

24 **FIRST CAUSE OF ACTION**

25 (Fraud/Concealment)

26 15. Jefferson incorporates herein by reference the allegations contained in
27 paragraphs 1-14, supra.

28 16. As Jefferson's business manager, Kritza and Jefferson were engaged in a

1 fiduciary relationship.

2 17. Between 2004 and 2013, Kritza intentionally failed to disclose an important fact
3 to Jefferson, that he was fraudulently amending and extending the purported LOC with
4 Alliance.

5 18. That Jefferson did not know of the concealed fact that Kritza was continuing to
6 access the LOC funds for his personal use without Jefferson's authority.

7 19. That Kritza intended to deceive Jefferson by concealing the fact until Jefferson
8 learned of the fact in or about October 2013.

9 20. That Jefferson reasonably relied on Kritza's deception, in his fiduciary capacity
10 as Jefferson's business manager.

11 21. Kritza's conduct was done with the intent to harm and defraud Jefferson and with
12 a gross disregard of Jefferson's rights. Additionally, said acts and conduct were designed by
13 Kritza to take unfair advantage of Jefferson. Therefore, in addition to actual damages, an award
14 of punitive damages is proper.

15 22. That Kritza's concealment was substantial factor in causing Jefferson's harm, in
16 excess of \$500,000, according to proof at time of trial.

17 **SECOND CAUSE OF ACTION**

18 (Breach of Fiduciary Duty)

19 23. Jefferson incorporates herein by reference the allegations contained in
20 paragraphs 1-22, supra.

21 24. Kritza owed Jefferson fiduciary obligations in his role as business manager,
22 including, but not limited to access to Jefferson's banking, financial and credit account
23 information. By reason of their fiduciary relationship, Kritza owed Jefferson the highest
24 obligation of good faith, fair dealing, loyalty, and due care.

25 25. Kritza violated and breached his fiduciary duties of care, loyalty, reasonable
26 inquiry, oversight, good faith, and supervision through his unauthorized use, extension and
27 amendment of the alleged Line of Credit without Jefferson's knowledge. These actions were
28 not a good faith exercise of loyalty, due care, or prudent business judgment to protect and

1 promote Jefferson's investment interests.

2 26. As a direct and proximate result of Kritza's breaches of his fiduciary duties,
3 Kritza caused, and will continue to cause Jefferson to suffer substantial monetary damages as a
4 result of the wrongdoing described herein, as well as further and even greater damage in the
5 future, including damage to Kritza's reputation, credit rating, and financial well-being.

6 27. As a direct and proximate result of Defendant's actions, Jefferson has suffered
7 general and special damages in excess of \$500,000. The amount of the damages is not yet
8 known, but will be shown with particularity according to proof at time of trial.

9 **THIRD CAUSE OF ACTION**

10 (Negligence)

11 28. Jefferson incorporates herein by reference the allegations contained in
12 paragraphs 1-27, supra.

13 29. Kritza owed a duty to Jefferson in his role as a business manager for Jefferson.

14 30. Kritza breached his duty by failing to implement and/or follow appropriate
15 procedures to manage Jefferson's business accounts and ventures, specifically as it relates to
16 verifying Jefferson's approval of the purported Alliance Line of Credit.

17 31. As a result of Kritza's conduct, Jefferson has incurred costs and likely will incur
18 additional costs related to this action and to investigate and address the malfeasance as a result
19 of Kritza's negligent acts and/or omissions. As a direct and proximate result of the acts and/or
20 omissions of Kritza, Jefferson has suffered damages in excess of \$500,000, in an amount to be
21 determined at the time of trial.

22 **FOURTH CAUSE OF ACTION**

23 (Breach of Contract)

24 32. Jefferson incorporates herein by reference the allegations contained in
25 paragraphs 1-31, supra.

26 33. Kritza was obligated under an oral agreement to perform various day-to-day
27 tasks, including but not limited to, serving as Jefferson's business manager in charge of
28 Jefferson's investments and business ventures.

34. Kritza breached his obligations under the contract by, among other things, forging Jefferson's signature on certain various documents and misappropriating monies through the purported Alliance LOC.

35. As of the date of this Complaint, outstanding monies owed remain unpaid in excess of \$500,000.

36. Jefferson is entitled to judgment against Kritza in an amount not less than \$500,000, including the Line of Credit Balance, plus accrued and accruing interest, default rate interest, attorneys' fees, and costs in an amount to be proven at trial.

37. This action arises out of contract, therefore, Jefferson is entitled to recover its attorneys' fees and costs from Kritza pursuant to A.R.S. §§ 12-341 and 12-341.01.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation)

38. Jefferson incorporates herein by reference the allegations contained in paragraphs 1-37, supra.

39. In his role as Jefferson's business manager between 2001 through 2013, Kritza negligently gathered, compiled, and communicated information regarding the purported Line of Credit agreements to Jefferson.

40. Kritza's negligent acts occurred during the life of the purported Line of Credit, specifically from 2005 through 2013.

41. Kritza, in the course of his business, profession, or employment, thus supplied misleading information for the guidance of Jefferson in his business transactions relating to the purported Line of Credit.

42. Kritza is therefore subject to liability for pecuniary loss caused to Jefferson by Jefferson's justifiable reliance upon the information, because Kritza failed to exercise reasonable care or competence in gathering or communicating that information.

43. As a direct and proximate result of the acts and/or omissions of Kritza, Jefferson has suffered damages in excess of \$500,000, in an amount to be determined at the time of trial.

44. If Kritza disclosed his true activities to Jefferson, Jefferson would not have

1 approved of the Line of Credit.

2 **SIXTH CAUSE OF ACTION**

3 (Unjust Enrichment)

4 45. Jefferson incorporates herein by reference the allegations contained in
5 paragraphs 1-44, supra.

6 46. By reason of Kritza's actions, omissions, statements, and conduct, Kritza has
7 been unjustly enriched. Specifically, but without limiting the foregoing, Kritza obtained
8 possession and control of the LOC fund to the exclusion of Jefferson; Kritza defrauded and
9 tortiously misrepresented Jefferson in order to unlawfully obtain dominion and control of
10 Jefferson's LOC funds.

11 47. As a direct and proximate result of the acts and/or omissions of Kritza, Jefferson
12 has suffered damages in excess of \$500,000, in an amount to be determined at the time of trial.

13 **SEVENTH CAUSE OF ACTION**

14 (Accounting)

15 48. Jefferson incorporates herein by reference the allegations contained in
16 paragraphs 1-47, supra.

17 49. In 2013, Jefferson demanded from Kritza an accounting and return of all
18 funds taken by Kritza.

19 50. Kritza is obligated, and Jefferson is entitled to an accounting and return of all
20 funds which were wrongfully and unlawfully taken by Kritza, for principal and interest
21 from 2004 until the present.

22 51. As of the date of the filing of this action, Jefferson has received no response
23 from Kritza, or any other person acting on its behalf, accounting for the sums of money
24 taken by Kritza

25 **EIGHTH CAUSE OF ACTION**

26 (Conversion)

27 52. Jefferson incorporates herein by reference the allegations contained in
28 paragraphs 1-51, supra.

53. To the extent Jefferson signed the purported Line of Credit, Jefferson obtained lawful control or possession of the Line of Credit funds amounting in \$500,000.

54. Upon information and belief, Jefferson alleges that Kritza has not contributed to Jefferson's funds. As such, Kritza's control or possession of the LOC Fund is not lawful.

55. Throughout the purported Line of Credit's existence, Kritza unlawfully obtained possession of the LOC Funds when Kritza unlawfully, without consent or authority, fraudulently caused Alliance and its agents, to authorize a purported amendment and extension to the purported Line of Credit.

56. The said transfer of LOC Funds was done without the consent of Jefferson and for Kritza's own benefit and purposes. Control and possession of the said property was intentionally and unlawfully seized.

57. As a direct and proximate result of Kritza's acts, Jefferson has suffered damages in excess of \$500,000, in an amount to be determined at the time of trial.

NINTH CAUSE OF ACTION

(Contribution)

58. Jefferson incorporates herein by reference the allegations contained in paragraphs 1-57, supra.

59. In the event liability should be established on the part of Jefferson, which liability is expressly denied, Jefferson is informed and believes and thereon alleges that it may be obligated to pay sums representing a percentage of liability not Jefferson's own, but rather that of Kritza. Therefore, Jefferson requests an adjudication and determination of its respective degree of liability, if any, on its part and on the part of the Kritza so as to determine that portion of the amount, of any, by which Jefferson is found liable, which actually represents the proportionate degree of fault of Kritza.

TENTH CAUSE OF ACTION

(Declaratory Judgment)

60. Jefferson incorporates herein by reference the allegations contained in paragraphs 1-59, supra.

61. A dispute has arisen and an actual controversy now exists between Jefferson and Kritza concerning the respective rights, duties and obligations of each to indemnify or to provide contribution in regard to a verdict or judgment, if any, rendered against Jefferson in this Action.

62. Jefferson contends that, in the event the acts and omissions of Kritza are determined to have been a proximate cause of the damages, if any, sustained by the Jefferson, then Jefferson is entitled to indemnity and contribution and/or contributions from Kritza.

63. Jefferson desires adjudication determination of the respective rights and duties of Jefferson and Kritza with respect to the damages claimed in the Action against Jefferson.

PRAYER

WHEREFORE, Third-Party Plaintiff Richard Jefferson prays for judgment against Third-Party Defendant Theodore Kritza as follows:

1. For judgment against Third-Party Defendant Kritza for all damages resulting from his fraud, negligence, breach of fiduciary duty, and omissions, according to proof, including punitive damages;

2. For judgment against Third-Party Defendant for contribution if Jefferson is found to be liable to Plaintiff in the Action.

3. For prejudgment interest on all sums expended in an amount to be determined at the time of trial;

4. For a declaration from this Court determining that Third-Party Plaintiff is entitled to reimbursement by way of indemnification or contribution from Third-Party Defendant;

5. Declaratory relief establishing the Third-Party Defendant Kritza's liability for the purported lines of credit;

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6. For Third-Party Plaintiff's attorney's fees and costs of suit; and
7. For such other and further relief the Court deems just and proper.

RESPECTFULLY SUBMITTED June 12, 2014

MURPHY, PEARSON BRADLEY & FEENEY

By /s/ Bryan L. Saalfeld (with permission)

Aaron K. McClellan

Bryan L. Saalfeld

Aaron K. McClellan

Charles N. Bahlert

88 Kearny St., 10th Floor

San Francisco, California

Attorneys for Defendant, Counterclaimant and

Third Party Plaintiff

Richard A. Jefferson

CERTIFICATE OF SERVICE

I certify that on June 12, 2014, I electronically transmitted the Third-Party Complaint to the U.S. District Court Clerk's Office using the CM/ECF System for filing

I further certify that on June 12, 2014, I served the Third-Party Complaint by mail on the following:

John R. Clemency, Esq.
Janel M. Glynn, Esq.
GALLAGHER & KENNEDY, P.A.
2575 E. Camelback Road
Phoenix, AZ 85016
Attorneys for Plaintiff

/s/
Lynn Anderson

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Attorneys for Defendant, Counterclaimant and Third Party Plaintiff
 Richard A. Jefferson

**UNITED STATES DISTRICT COURT
 FOR THE
 DISTRICT OF ARIZONA**

WESTERN ALLIANCE BANK, an Arizona
 corporation,

Plaintiff,

v.

RICHARD JEFFERSON, an individual man,
 Defendant.

Case No.: 2:14-cv-00761-JWS

**DEFENDANT, COUNTERCLAIMANT
 AND THIRD-PARTY PLAINTIFF
 RICHARD A. JEFFERSON 1ST
 AMENDED THIRD-PARTY
 COMPLAINT**

RICHARD JEFFERSON, an individual man,
 Counterclaimant,

v.

WESTERN ALLIANCE BANK, an Arizona
 corporation
 Counter-Defendant.

1 RICHARD JEFFERSON, an individual man,
2 Third-Party Plaintiff,
3 v.
4 THEODORE KRITZA, a married man, and
5 MICHELLE LEE KRITZA, a married woman
6 Third-Party Defendants.
7

8
9 Defendant, Counterclaimant and Third-Party Plaintiff Richard A. Jefferson
10 ("Jefferson") hereby files this 1st Amended Third-Party Complaint against Third-Party
11 Defendants, Theodore Kritza, ("T. Kritza") a married man, and Michelle Lee Kritza, a married
12 woman, ("M. Kritza") and alleges as follows:

13 JURISDICTION

14 1. Because this Court had original jurisdiction over the Underlying Complaint
15 based on diversity of citizenship (28 U.S.C., § 1332), the Court may adjudicate the state law
16 claims that are transactionally related to the underlying claims pursuant to 28 U.S.C., §
17 1367(a).

18 2. The Court also has jurisdiction pursuant to 28 U.S.C., §1367(a) of this Third-
19 Party Complaint that is brought under federal Rules of Civil Procedure, Rule 14. The Court
20 further has jurisdiction over the claims against the Third-Party Defendants Theodore Kritza
21 and Michelle Kritza pursuant to Federal Rule of Civil procedure, Rule 18.

22 VENUE

23 3. The events or omissions giving rise to Jefferson's claim occurred in this judicial
24 jurisdiction. Therefore, venue is proper here pursuant to 28 U.S.C. section 1391(b)(2).

25 PARTIES

26 4. Jefferson is a single man, and a resident of the State of California. Although he
27 denies any and all liability to Plaintiff Western Alliance Bank, an Arizona Corporation on its
28 complaint in the underlying action, Jefferson incorporates the complaint herein for reference

1 only. Jefferson files this Third-Party complaint to protect, declare and assert his rights in the
2 event that he is held liable to the Plaintiff in the underlying action.

3 5. Third-Party Plaintiff Jefferson is informed and believes and on that basis alleges
4 that Third-Party Defendant Theodore Kritza, an individual, and on information and belief a
5 married man, is and was, at all relevant times, a resident of Maricopa County in the State of
6 Arizona.

7 6. Third-Party Plaintiff Jefferson is informed and believes and on that basis alleges
8 that Third-Party Defendant Michelle Lee Kritza, an individual, and on information and belief, a
9 married woman, is and was, at all relevant times, a resident of Maricopa County in the State of
10 Arizona and the spouse of Third-Party Defendant Theodore Kritza. Jefferson is informed and
11 believes and on that basis alleges that T. Kritza acted for and on behalf, and for the benefit of,
12 himself and the community of T. Kritza and M. Kritza. Michelle Lee Kritza is being named as
13 a necessary and proper party to establish the liability of the community with her spouse, Third
14 Party Defendant Theodore Kritza.

15 **FACTUAL BACKGROUND**

16 7. Jefferson has been named in the underlying complaint in the subject litigation.
17 Jefferson incorporates the complaint herein by reference, for a reference only, and not for the
18 purpose of admitting or denying the allegations contained therein.

19 8. Plaintiff Western Alliance Bank ("Alliance") is an Arizona corporation that was
20 formerly known as, or is believed to have been formerly known as, Alliance Bank of Arizona.
21 This action concerns a dispute over whether Jefferson bears liability for the alleged breach of
22 contract allegedly entered into between Jefferson and Alliance, relating to a revolving line of
23 credit ("LOC") and subsequent documents and issued by Alliance in an amount not to exceed
24 \$500,000 in or about October 5, 2004.

25 9. Jefferson denies that he signed and delivered all of the documents relating to this
26 alleged LOC, including Exhibits A-K (or at least certain of them) to Appendix to Alliance's
27 Complaint. Moreover, Jefferson affirmatively believes that Exhibits A-K are forgeries, signed
28 without his consent or authorization by Third-Party Defendant Theodore Kritza.

1 10. In or about October 2013, Jefferson learned from Alliance about the existence of
2 an outstanding balance on a line of credit of approximately \$500,000 while in the process of
3 purchasing of a residential property in California. At or about that time, Jefferson learned from
4 Alliance that communications relating to the approval, renewal and withdrawal of amounts
5 relating to the LOC had been conducted by and through Kritza, Jefferson's former business
6 manager over the period of the LOC, approximately 2004-2013.

7 11. In October 2013, Jefferson confronted T. Kritza regarding the LOC and amounts
8 owing and due. In doing so, T. Kritza admitted to Jefferson that he had used LOC funds
9 without Jefferson's consent or authorization in an amount exceeding \$500,000.

10 12. In January 2014, Jefferson obtained documents relating to the LOC from
11 Alliance which revealed Jefferson's forged signature, including, but not limited to, Exhibits A-
12 K to Appendix to Alliance's Complaint. At no point in time had Jefferson authorized T. Kritza
13 to sign Jefferson's signature on these documents. Furthermore, Jefferson did not consent to T.
14 Kritza's personal use of these amounts owing on the LOC. Jefferson lacks sufficient
15 information to determine whether Jefferson may have received any of the proceeds or benefits,
16 if any, of the LOC, but believes that T. Kritza and the community of T. Kritza and M. Kritza
17 received the benefit of the majority of the amounts of the LOC.

18 13. Beginning in or about 2001, T. Kritza began performing services for Jefferson,
19 including but not limited to services as Jefferson's personal business manager. From 2001
20 until 2013, T. Kritza performed various tasks, including but not limited to, serving as
21 Jefferson's business manager in charge of Jefferson's day to day affairs, investments and
22 business ventures. In this role, T. Kritza received authorized access to Jefferson's financial
23 accounts, credit information, and related financial information. But at no point did Jefferson
24 provide his consent as it relates to T. Kritza's personal and unauthorized use of monies relating
25 to the LOC as alleged by Alliance.

26 14. During the years 2004 to 2013, T. Kritza concealed from Jefferson that he had
27 unlawfully used, extended and amended the LOC funds. In doing so, T. Kritza
28 misappropriated the LOC funds for his own personal use and unauthorized use, to which

1 Jefferson has no involvement or ownership interest. During this time period, T. Kritza
2 renewed and/or caused to renew the LOC and related loan documents alleged by Alliance in its
3 underlying complaint, without Jefferson's consent, and absconded with the amounts
4 unbeknownst to Jefferson.

5 15. As a result of T. Kritza's acts, Jefferson has suffered damages to be proved at
6 trial, including monetary losses in excess of \$500,000.

7 **FIRST CAUSE OF ACTION**

8 (Fraud/Concealment)

9 16. Jefferson incorporates herein by reference the allegations contained in
10 paragraphs 1-15, supra.

11 17. As Jefferson's business manager, T. Kritza and Jefferson were engaged in a
12 fiduciary relationship.

13 18. Between 2004 and 2013, T. Kritza intentionally failed to disclose an important
14 fact to Jefferson, that he was fraudulently amending and extending the purported LOC with
15 Alliance.

16 19. That Jefferson did not know of the concealed fact that T. Kritza was continuing
17 to access the LOC funds for his personal use without Jefferson's authority.

18 20. That T. Kritza intended to deceive Jefferson by concealing the fact until
19 Jefferson learned of the fact in or about October 2013.

20 21. That Jefferson reasonably relied on T. Kritza's deception, in his fiduciary
21 capacity as Jefferson's business manager.

22 22. T. Kritza's conduct was done with the intent to harm and defraud Jefferson and
23 with a gross disregard of Jefferson's rights. Additionally, said acts and conduct were designed
24 by Kritza to take unfair advantage of Jefferson. Therefore, in addition to actual damages, an
25 award of punitive damages is proper.

26 23. That T. Kritza's concealment was substantial factor in causing Jefferson's harm,
27 in excess of \$500,000, according to proof at time of trial.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

24. Jefferson incorporates herein by reference the allegations contained in paragraphs 1-23, supra.

25. T. Kritza owed Jefferson fiduciary obligations in his role as business manager, including, but not limited to access to Jefferson's banking, financial and credit account information. By reason of their fiduciary relationship, T. Kritza owed Jefferson the highest obligation of good faith, fair dealing, loyalty, and due care.

26. T. Kritza violated and breached his fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith, and supervision through his unauthorized use, extension and amendment of the alleged Line of Credit without Jefferson's knowledge. These actions were not a good faith exercise of loyalty, due care, or prudent business judgment to protect and promote Jefferson's investment interests.

27. As a direct and proximate result of T. Kritza's breaches of his fiduciary duties, T. Kritza caused, and will continue to cause Jefferson to suffer substantial monetary damages as a result of the wrongdoing described herein, as well as further and even greater damage in the future, including damage to T. Kritza's reputation, credit rating, and financial well-being.

28. As a direct and proximate result of Defendant T. Kritza's actions, Jefferson has suffered general and special damages in excess of \$500,000. The amount of the damages is not yet known, but will be shown with particularity according to proof at time of trial.

THIRD CAUSE OF ACTION

(Negligence)

29. Jefferson incorporates herein by reference the allegations contained in paragraphs 1-28, supra.

30. T. Kritza owed a duty to Jefferson in his role as a business manager for Jefferson.

31. T. Kritza breached his duty by failing to implement and/or follow appropriate procedures to manage Jefferson's business accounts and ventures, specifically as it relates to verifying Jefferson's approval of the purported Alliance Line of Credit.

32. As a result of T. Kritza's conduct, Jefferson has incurred costs and likely will incur additional costs related to this action and to investigate and address the malfeasance as a result of T. Kritza's negligent acts and/or omissions. As a direct and proximate result of the acts and/or omissions of T. Kritza, Jefferson has suffered damages in excess of \$500,000, in an amount to be determined at the time of trial.

FOURTH CAUSE OF ACTION

(Breach of Contract)

33. Jefferson incorporates herein by reference the allegations contained in paragraphs 1-32, supra.

34. T. Kritza was obligated under an oral agreement to perform various day-to-day tasks, including but not limited to, serving as Jefferson's business manager in charge of Jefferson's investments and business ventures.

35. T. Kritza breached his obligations under the contract, including but not limited to the implied covenant of good faith and fair dealing, by, among other things, forging Jefferson's signature on certain various documents and misappropriating monies through the purported Alliance LOC.

36. As of the date of this Complaint, outstanding monies owed remain unpaid in excess of \$500,000.

37. Jefferson is entitled to judgment against T. Kritza and the community of T. Kritza and M. Kritza in an amount not less than \$500,000, including the Line of Credit Balance, plus accrued and accruing interest, default rate interest, attorneys' fees, and costs in an amount to be proven at trial.

38. This action arises out of contract, therefore, Jefferson is entitled to recover its attorneys' fees and costs from T. Kritza and the community of T. Kritza and M. Kritza pursuant to A.R.S. §§ 12-341 and 12-341.01.

FIFTH CAUSE OF ACTION

(Negligent Misrepresentation)

39. Jefferson incorporates herein by reference the allegations contained in

1 paragraphs 1-38, supra.

2 40. In his role as Jefferson's business manager between 2001 through 2013, T. Kritza
3 negligently gathered, compiled, and communicated information regarding the purported Line
4 of Credit agreements to Jefferson.

5 41. T. Kritza's negligent acts occurred during the life of the purported Line of Credit,
6 specifically from 2005 through 2013.

7 42. T. Kritza, in the course of his business, profession, or employment, thus supplied
8 misleading information for the guidance of Jefferson in his business transactions relating to the
9 purported Line of Credit.

10 43. T. Kritza and the community of T. Kritza and M. Kritza are therefore subject to
11 liability for pecuniary loss caused to Jefferson by Jefferson's justifiable reliance upon the
12 information, because T. Kritza failed to exercise reasonable care or competence in gathering or
13 communicating that information.

14 44. As a direct and proximate result of the acts and/or omissions of Kritza, Jefferson
15 has suffered damages in excess of \$500,000, in an amount to be determined at the time of trial.

16 45. If T. Kritza disclosed his true activities to Jefferson, Jefferson would not have
17 approved of the Line of Credit.

18 **SIXTH CAUSE OF ACTION**

19 (Unjust Enrichment)

20 46. Jefferson incorporates herein by reference the allegations contained in
21 paragraphs 1-45, supra.

22 47. By reason of Kritza's actions, omissions, statements, and conduct, T. Kritza and
23 the community of T. Kritza and M. Kritza have been unjustly enriched. Specifically, but
24 without limiting the foregoing, T. Kritza obtained possession and control of the LOC fund to
25 the exclusion of Jefferson; T. Kritza defrauded and tortiously misrepresented Jefferson in order
26 to unlawfully obtain dominion and control of Jefferson's LOC funds.

27 48. As a direct and proximate result of the acts and/or omissions of T. Kritza,
28 Jefferson has suffered damages in excess of \$500,000, in an amount to be determined at the

1 time of trial.

2 **SEVENTH CAUSE OF ACTION**

3 (Accounting)

4 49. Jefferson incorporates herein by reference the allegations contained in
5 paragraphs 1-48, supra.

6 50. In 2013, Jefferson demanded from T. Kritza an accounting and return of all funds
7 taken by T. Kritza.

8 51. T. Kritza is obligated, and Jefferson is entitled to an accounting and return of all
9 funds which were wrongfully and unlawfully taken by T. Kritza, for principal and interest from
10 2004 until the present.

11 52. As of the date of the filing of this action, Jefferson has received no response from
12 T. Kritza, or any other person acting on its behalf, accounting for the sums of money taken by
13 T. Kritza

14 **EIGHTH CAUSE OF ACTION**

15 (Conversion)

16 53. Jefferson incorporates herein by reference the allegations contained in
17 paragraphs 1-52, supra.

18 54. To the extent Jefferson signed the purported Line of Credit, Jefferson obtained
19 lawful control or possession of the Line of Credit funds amounting in \$500,000.

20 55. Upon information and belief, Jefferson alleges that T. Kritza has not contributed to
21 Jefferson's funds. As such, T. Kritza's control or possession of the LOC Fund is not lawful.

22 56. Throughout the purported Line of Credit's existence, T. Kritza unlawfully
23 obtained possession of the LOC Funds when T. Kritza unlawfully, without consent or
24 authority, fraudulently caused Alliance and its agents, to authorize a purported amendment and
25 extension to the purported Line of Credit.

26 57. The said transfer of LOC Funds was done without the consent of Jefferson and
27 for T. Kritza's and the community of T. Kritza and M. Kritza's own benefit and purposes.
28 Control and possession of the said property was intentionally and unlawfully seized.

1 58. As a direct and proximate result of T. Kritza's acts, Jefferson has suffered
2 damages in excess of \$500,000, in an amount to be determined at the time of trial.

3 **NINTH CAUSE OF ACTION**

4 (Contribution/Indemnification)

5 59. Jefferson incorporates herein by reference the allegations contained in
6 paragraphs 1-58, supra.

7 60. In the event liability should be established on the part of Jefferson, which
8 liability is expressly denied, Jefferson is informed and believes and thereon alleges that it
9 would be obligated to pay sums representing a percentage of liability not Jefferson's own, but
10 rather that of T. Kritza and the community of T. Kritza and M. Kritza. Therefore, Jefferson
11 requests an adjudication and determination of its respective degree of liability, if any, on its
12 part and on the part of the T. Kritza so as to determine that portion of the amount, of any, by
13 which Jefferson is found liable, which actually represents the proportionate degree of fault of
14 T. Kritza, and the liability for which should be borne by T. Kritza and the community of T.
15 Kritza and M. Kritza.

16 **TENTH CAUSE OF ACTION**

17 (Declaratory Judgment)

18 61. Jefferson incorporates herein by reference the allegations contained in
19 paragraphs 1-60, supra.

20 62. A dispute has arisen and an actual controversy now exists between Jefferson and
21 T. Kritza concerning the respective rights, duties and obligations of each to indemnify or to
22 provide contribution in regard to a verdict or judgment, if any, rendered against Jefferson in
23 this Action.

24 62. Jefferson contends that, in the event the acts and omissions of T. Kritza are
25 determined to have been a proximate cause of the damages, if any, sustained by the Jefferson,
26 then Jefferson is entitled to indemnity and contribution and/or contributions from T. Kritza and
27 the community of T. Kritza and M. Kritza.

28 63. Jefferson desires adjudication determination of the respective rights and duties of

1 Jefferson and T. Kritza and the community of T. Krtitza and M. Kritza with respect to the
2 damages claimed in the Action against Jefferson.

3 **PRAYER**

4 WHEREFORE, Third-Party Plaintiff Richard Jefferson prays for judgment jointly and
5 severally against T. Kritza and the community of T. Kritza and M. Kritza as follows:

6 1. For judgment jointly and severally against T. Kritza and the community of T.
7 Kritza and M. Kritza for all damages resulting from T. Kritza's fraud, negligence, negligent
8 misrepresentation, conversion, breach of contract, breach of implied covenant of good faith
9 and fair dealing, breach of fiduciary duty, and omissions and other conduct, according to proof,
10 including punitive damages;

11 2. For judgment jointly and severally against T. Kritza and the community of T.
12 Kritza and M. Kritza for contribution and/or indemnification if Jefferson is found to be liable
13 to Plaintiff in the Action;

14 3. For prejudgment interest on all sums expended in an amount to be determined at
15 the time of trial;

16 4. For a declaration from this Court determining that Third-Party Plaintiff is entitled
17 to reimbursement by way of indemnification or contribution from Third-Party Defendants T.
18 Kritza and M. Kritza;

19 5. Declaratory relief establishing the Third-Party Defendant Kritza's liability and
20 the community of T. Kritza and M. Kritza for the purported lines of credit;

21 6. Awarding Jefferson restitution and other equitable relief against T. Kritza and the
22 community of T. Kritza and M. Kritza;

23 7. For Third-Party Plaintiff's attorney's fees and costs of suit;

24 8. For post-judgment interest; and

25 9. For such other and further relief the Court deems just and proper.

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1 RESPECTFULLY SUBMITTED July 28, 2014

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3 MURPHY, PEARSON BRADLEY & FEENEY

4 By /s/ Bryan L. Saalfeld
5 Aaron K. McClellan
6 Bryan L. Saalfeld
7 Charles N. Bahlert
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9 San Francisco, California
10 Attorneys for Defendant, Counterclaimant and
11 Third-Party Plaintiff
12 Richard A. Jefferson
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CERTIFICATE OF SERVICE

I certify that on June 12, 2014, I electronically transmitted the Third-Party Complaint to the U.S. District Court Clerk's Office using the CM/ECF System for filing.

I further certify that on June 12, 2014, I served the Third-Party Complaint, by mail on the following:

John R. Clemency, Esq.
Janel M. Glynn, Esq.
GALLAGHER & KENNEDY, P.A.
2575 E. Camelback Road
Phoenix, AZ 85016
Attorneys for Plaintiff

/s/
Geneva D. Ashley