

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-CV-01156-WJM

DANIEL J. MILLER; TERANCE M. MAHER; MAX H. OWEN; MAHER FINANCIAL SERVICES PPST; DAVID MICHAUD; BRUCE A. BURRIS; WAYNE LARSON (MAURICE A. LARSON GST TRUST); HUGH THOMAS, JR. IRA #4949; GARY L. PETERSEN; MARLAYNE C. MILLER; GARY M. CUMMINGS; JOE W. KIRKPATRICK; JOE W. KIRKPATRICK, IRA #40427; DAVID O'BANNON; DORIS T. REA (EXECUTOR OF ESTATE CLAUDIA REA BROWERS); BRUCE LAMBERT REVOCABLE LIVING TRUST; KEVIN M. CUMMINGS TRUST, GARY CUMMINGS TRUSTEE; SIMONE MERCER; DANIEL M. LAVIK; THE 4 D's INVESTMENT CLUB; CHESTERFIELD MORTGAGE INVESTORS, INC.; ESTATE OF CHARLES R. ST. JOHN (ST. JOHN - FEE FAMILY LLC); ESTATE OF HARRY A. KIEHL; ROGER C. CLINE; PETER VERMEULEN (VERMEULEN FAMILY LLC); JOSEPHINE S. VERMEULEN, TRUSTEE (J.S. VERMEULEN LIVING TRUST); JOSEPHINE S. VERMEULEN, TRUSTEE (GST EXEMPT FAMILY TRUST OF A. VERMEULEN); ALICE LYN LARKSPUR REVOCABLE TRUST; WOLSDORF LIVING TRUST; DAVID ROOK; JAMES G. BENNETT; DORIS M. STROM; JAMES ROSE; JOAN AMES; RON IBSEN; WAYNE D. PORTER; BARBARA R. SORENSEN LIVING TRUST,

Plaintiffs,

v.

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HAROLD S. McCLOUD, THOMAS J.  
POWER, AND CORELOGIC  
COMMERCIAL REAL ESTATE  
SERVICES, INC.,

Defendants.

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JURY DEMAND**

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**I. PARTIES**

1.1 Plaintiffs. Plaintiffs are:

1.1.1. Plaintiff Daniel J. Miller is a citizen of the State of Washington. Mr. Miller was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.2. Plaintiff Terance M. Maher is a citizen of the State of Washington. Mr. Maher was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.3. Plaintiff Max H. Owen is a citizen of the State of Washington. Mr. Owen was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.4. Plaintiff Maher Financial Services PPST is a citizen of the State of Washington. Maher Financial Services was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiaries are Terry Maher and Sally Maher. Both reside in the State of Washington.

1.1.5. Plaintiff David Michaud is a citizen of the State of Washington. Mr.

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Michaud was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.6. Plaintiff Bruce A. Burris is a citizen of the State of Washington. Mr. Burris was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.7. Plaintiff Wayne Larson (Maurice A. Larson GST Trust) is a citizen of the State of Alaska. Mr. Larson was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiaries are Mary Jo Larson, resident of Fairbanks, Alaska; Heather Sharpton, a resident of Fairbanks, Alaska; Hansel Larsen, a resident of Portland, Oregon; and Patryce McKinney, a resident of Anchorage, Alaska.

1.1.8. Plaintiff Hugh Thomas, Jr. IRA #4949 is a citizen of the State of Washington. Mr. Thomas was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.9. Plaintiff Gary L. Petersen is a citizen of the State of Washington. Mr. Petersen was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.10. Plaintiff Marlayne C. Miller is a citizen of the State of Washington. Ms. Miller was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.11. Plaintiff Gary M. Cummings is a citizen of the State of Washington. Mr. Cummings was an investor in the promissory note secured by a deed

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of trust on the Palladium Cabaret/Disco property described below.

1.1.12. Plaintiff Joe W. Kirkpatrick, IRA #40427 is a citizen of the State of Washington. Mr. Kirkpatrick was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.13. Plaintiff Joe W. Kirkpatrick is a citizen of the State of Washington. Mr. Kirkpatrick was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.14. Plaintiff David O'Bannon is a citizen of the State of Washington. Mr. O'Bannon was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.15. Plaintiff Doris T. Rea (Executor of Estate Claudia Rea Browers) is a citizen of the State of Washington. Ms. Rea was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.16. Plaintiff Bruce Lambert Revocable Living Trust is a citizen of the State of Arizona. The Bruce Lambert Revocable Living Trust was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiaries are Bruce and Donna Lambert, residents of Green Valley, Arizona; Ted Lambert, a resident of Tacoma, Washington; and Brian Lambert, a resident of Tacoma, Washington.

1.1.17. Plaintiff Kevin M. Cummings Trust, Gary Cummings Trustee is a citizen of the State of Washington. The Kevin M. Cummings Trust was an investor

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in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. Gary Cummings is the beneficiary of the trust.

1.1.18. Plaintiff Simone Mercer is a citizen of the State of Washington. Simone Mercer was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.19. Plaintiff Daniel M. Lavik is a citizen of the State of Washington. Mr. Lavik was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.20. Plaintiff 4 D's Investment Club is a citizen of the State of Washington. The 4 D's Investment Club was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.21. Plaintiff Chesterfield Mortgage Investors, Inc. is a citizen of the State of Washington. Chesterfield Mortgage Investors, Inc. retained a fractional interest in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. Chesterfield Mortgage Investors, Inc. is under the receivership of Mel Codd.

1.1.22. Plaintiff Estate of Charles R. St. John (St. John - Fee Family LLC) is a citizen of the State of Ohio. The Estate of Charles R. St. John was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The members are Susan Fee and Rich St. John. Ms. Fee resides in Ohio. Mr. St. John resides in Montana.

1.1.23. Plaintiff Estate of Harry A. Kiehl is a citizen of the State of

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Washington. The Estate of Harry A. Kiehl was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.24. Plaintiff Roger C. Cline is a citizen of the State of Washington. Roger C. Cline was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.25. Plaintiff Peter Vermeulen is a citizen of the State of Washington. Peter Vermeulen was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.26. Plaintiff Josephine S. Vermeulen (Trustee of J.S. Vermeulen Living Trust) is a citizen of the State of Arizona. The J.S. Vermeulen Living Trust was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiaries are Deana Jacobsen, a resident of Bellevue, Washington; Peter Vermeulen, a resident of North Bend, Washington; and Katarina Biesecker, a resident of Stanwood, Washington.

1.1.27. Plaintiff Josephine S. Vermeulen (Trustee of the GST Exempt Family Trust of A. Vermeulen) is a citizen of the State of Arizona. The GST Exempt Family Trust of A. Vermeulen was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiary is Josephine S. Vermeulen, a resident of Sun City West, Arizona.

1.1.28. Plaintiff Alice Lyn Larkspur Revocable Trust is a citizen of the State of Washington. The Alice Lyn Larkspur Revocable Trust was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property

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described below. The beneficiaries are Alice Larkspur, a resident of Hawaii; Norman Swafield, a resident of Washington; Julie Swafield, a resident of Washington; and Leona Larkspur, a resident of Hawaii.

1.1.29. Plaintiff Wolsdorf Living Trust is a citizen of the State of Washington. The Wolsdorf Living Trust was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiary is Amy C. Wolsdorf, a resident of Bellingham, Washington.

1.1.30. Plaintiff David Rook is a citizen of the State of Washington. David Rook was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.31. Plaintiff James Bennett is a citizen of the State of Washington. James Bennett was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.32. Plaintiff Doris M. Strom is a citizen of the State of Washington. Doris M. Strom was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.33. Plaintiff James Rose is a citizen of the State of Washington. James Rose was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.34. Plaintiff Joan Ames is a citizen of the State of Washington. Joan Ames was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

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1.1.35. Plaintiff Ron Ibsen is a citizen of the State of Washington.

Ron Ibsen was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.36. Plaintiff Wayne Porter is a citizen of the State of Washington.

Wayne Porter was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below.

1.1.37. Plaintiff Barbara R. Sorensen Living Trust is citizen of the

State of Washington. The Barbara R. Sorensen Living Trust was an investor in the promissory note secured by a deed of trust on the Palladium Cabaret/Disco property described below. The beneficiaries Wallace Reid, Randall Reid, Leon Sorensen, Dale Sorensen, and John Sorenson. All are believed to be residents of the Pacific Northwest of the United States. In addition, Faye Sorensen is a beneficiary. She resides in California. None of the beneficiaries reside in Colorado.

1.2 Defendant McCloud. Defendant Harold S. McCloud is a citizen of the State of Colorado.

1.3 Defendant Power. Defendant Thomas J. Power is a citizen of the State of Colorado.

1.4 Defendant Corelogic. Defendant Corelogic Commercial Real Estate Services, Inc. ("Corelogic") (was formerly known as First American Tax Valuation, Inc.). Corelogic is incorporated in the State of Florida. Its principal place of business is in the State of Colorado.



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## II. JURISDICTION AND VENUE

2.1 Subject Matter Jurisdiction. This court has subject-matter jurisdiction pursuant to 28 USC § 1332, this being an action between citizens of different states in which the amount in controversy exceeds \$75,000.

2.2 Personal Jurisdiction. The Court has personal jurisdiction over all parties.

2.3 Venue. Venue is proper in this judicial district pursuant to 28 USC § 1391(b)(2) and (b)(3), as: (a) a substantial part of the events/omissions giving rise to the claim occurred here; and (b) at least one defendant is subject to the Court's personal jurisdiction.

## III. FACTUAL ALLEGATIONS

3.1 CMI. Chesterfield Mortgage Investors, Inc. (hereinafter referred to as "CMI") was a Washington corporation with its principal place of business located in Seattle, Washington.

3.2 CMI's Business. At all relevant times, CMI was in the business of making loans to borrowers. The loans were evidenced by a promissory note payable from the borrower to CMI and secured by a deed of trust. CMI sold participation interests in the promissory notes and deeds of trust to the investors. CMI assigned undivided fractional interests in the deed of trust to the individual investors based upon the amount invested. CMI retained a fractional interest in the deed of trust.

3.3 Palladium Cabaret Appraisal. MJR One, LLC and MJR Two, LLC ("MJR") owned the Palladium Cabaret/Disco Building ("Palladium Cabaret/Disco"), located in the greater Denver, Colorado area. MJR sought a \$3.1 million loan from CMI. CMI hired the

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defendants to appraise the Palladium Cabaret/Disco property. The appraisal was issued on April 31, 2006, and valued the property at: (a) \$5,350,000 "as is;" (b) \$6,650,000 upon completion of certain improvements; and (c) valued the personal property at an additional \$1,870,000. The defendants were aware the appraisal would be used to cause potential investors in a securities offering to loan money secured by the Palladium Cabaret/Disco property and expressly consented to such use. This action arises from that appraisal.

3.4 Corelogic Employed Power. Mr. Power was employed by Corelogic at the time of the appraisal at issue and was paid by Corelogic for that work.

3.5 Loan and Sale of Participation Interests. With defendants' appraisal in hand, CMI lent \$3.1 million to MJR secured by the Palladium Cabaret/Disco property. CMI sold participation interests in the loan. Before doing so, it provided each of the investors, including plaintiffs, with a specific offering circular that included photocopies of the signed appraisal prepared by defendants.

3.6 Default by MJR. MJR defaulted on the loan and the property was sold at a trustee's sale on February 9, 2012 for a gross amount of \$1,399,000.

3.7 Negligent Misrepresentation. Defendants negligently or intentionally misrepresented material information regarding the properties in their appraisals. Defendants falsely represented the fair market value of the properties under the guise of a professional appraisal. The representation was material to the plaintiffs' determination whether to lend money or purchase a participation interest in the promissory note and deed of trust relating to the property. Defendants intended that the false representations

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would be acted upon by the plaintiffs. The plaintiffs were ignorant of the falsity of the representations of defendants. Plaintiffs justifiably relied on the truth of the representations when lending and when purchasing investment interests from CMI. Plaintiffs had the right to rely upon the representations of defendants. As a proximate consequence, plaintiffs suffered significant monetary damage, including, without limitation, the loss of the return of their investment.

3.8 Negligence. Defendants are liable for negligence, which proximately caused the plaintiffs damage as described above. Without limitation, defendants, in the course of their business and profession, or in a transaction in which they had a pecuniary interest, supplied false information for the guidance of the plaintiffs in their business transactions. Defendants failed to exercise reasonable care or competence in obtaining or communicating the information. Defendants are subject to liability for the pecuniary loss caused by plaintiffs' justifiable reliance upon the information.

3.9 Washington State Securities Act. Defendants violated the Securities Act of Washington. Defendants are "sellers" of securities as the term is construed under the Securities Act of Washington. In connection with the offer, sale, or purchase of a security:

- a. The defendants directly or indirectly employed a device, scheme, or artifice to defraud.
- b. The defendants directly or indirectly made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made,

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not misleading.

c. The defendants directly or indirectly engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon a person.

d. Defendants are liable to plaintiffs under RCW 21.20.430.

3.10 Consumer Protection Act. Defendants are liable under the Consumer Protection Act, RCW 19.86.010, to .920. The conduct described above was an unfair or deceptive act or practice that occurred in trade or commerce, affected the public interest, and caused injury to the plaintiffs' business or property.

3.11 Constructive Fraud. Defendants have committed constructive fraud.

#### IV. FOREIGN LAW

4.1 Washington Law. Pursuant to FRCP 44.1, plaintiffs give notice that the law of the State of Washington should be applied in this matter. If the Court determines the law of Colorado should be applied we will seek leave to assert claims under the Colorado Securities Act and Colorado Consumer Protection Act.

#### V. PRAYER FOR RELIEF

Plaintiffs request the following relief:

5.1 Money Damages. For judgment against defendants, jointly and severally liable, for money damages;

5.2 Exemplary Damages. For exemplary damages as provided by law;

5.3 Prejudgment Interest. For prejudgment interest on all liquidated amounts.

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5.4 Fees and Costs. For plaintiff's attorneys' fees and costs to the maximum extent authorized by law; and

5.5 Other Relief. For such further relief as deemed appropriate by the Court.

### **JURY DEMAND**

The plaintiffs demand that this matter be heard before a jury on all issues so triable.

Dated this \_\_\_\_ day of June, 2014.

s/Jeffrey I. Tilden

Jeffrey I. Tilden, *Pro Hac Vice*  
Susannah C. Carr, *Pro Hac Vice*  
Gordon Tilden Thomas & Cordell, LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Telephone: (206) 467-6477  
FAX: (206) 467-6292  
E-mail: [jtilden@gordontilden.com](mailto:jtilden@gordontilden.com)  
[scarr@gordontilden.com](mailto:scarr@gordontilden.com)  
Attorney for Plaintiffs

s/Isaac Ruiz

William C. Smart, *Pro Hac Vice*  
Isaac Ruiz, *Pro Hac Vice*  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Telephone: (206) 623-1900  
FAX: (206) 623-33-84  
E-mail: [wsmart@kellerrohrback.com](mailto:wsmart@kellerrohrback.com)  
[iruiz@kellerrohrback.com](mailto:iruiz@kellerrohrback.com)  
Attorney for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2014, I served the foregoing with the Clerk of the Court using the CM/ECF system which will send notification via e-mail to:

Kenneth L. Levinson, #9060  
Cherami Ball Costigan, #34644  
[kll@ballev.com](mailto:kll@ballev.com); [cbc@ballev.com](mailto:cbc@ballev.com)

R. Scott Fitzke, #35293  
T. Damien Zumbrennen, #39791  
[sfitzke@sflaw.net](mailto:sfitzke@sflaw.net); [dzumbrennen@sflaw.net](mailto:dzumbrennen@sflaw.net)

*s/ Ellen R. Evans*  
\_\_\_\_\_  
Ellen R. Evans, Legal Secretary  
Gordon Tilden Thomas & Cordell, LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154-1007  
Telephone: (206) 467-6477  
[eevans@gordontilden.com](mailto:eevans@gordontilden.com)