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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

ROI PROPERTIES, INC. as
Liquidating Trustee of the estates of
EPICENTER PARTNERS LLC and
GRAY MEYER FANNIN LLC,

Plaintiffs,

v.

BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.

Defendants.

No. CV2018-007464

EX PARTE MOTION FOR:
(1) LEAVE TO AMEND THE
COMPLAINT TO SUBSTITUTE REAL
PARTY IN INTEREST,
(2) AN EXTENSION OF TIME TO
ACCOMPLISH SERVICE OF PROCESS
ON DEFENDANTS, AND
(3) AN ORDER PERMITTING
SERVICE BY ALTERNATE MEANS

(Assigned to Hon. Timothy Thomason)

Pursuant to Ariz. R. Civ. P. 15(a)(2) and Ariz. R. Civ. P. 17(a), Plaintiff respectfully requests leave to file a Second Amended Complaint to substitute Epicenter Loss Recovery, L.L.C. ("ELR") for R.O.I. Properties, Inc. as Liquidating Trustee (the "Trustee") of the estates of Epicenter Partners, L.L.C. ("Epicenter") and Gray Meyer Fannin, L.L.C. ("GMF"). As the Court may recall from the prior motion to extend the time for service, the claims at issue were the property of the bankruptcy estate of Epicenter and GMF, and were going to be auctioned in the Bankruptcy Court. Through that process, ELR now holds the claim, so this motion seeks to amend the complaint to substitute it as the real party in interest. Plaintiff also respectfully

1 requests this Court to grant ELR a six-month extension of time to accomplish service on
2 Defendants Burford Capital Ltd. and Ganymede Investments Ltd. (“Burford,” “Ganymede,”
3 and collectively, “Defendants”). This extension is necessary due to the length of time it will
4 take to complete international service of process on these Guernsey entities.

5 In accordance with Ariz. R. Civ. P. 15(a)(4), a copy of the proposed amended complaint
6 and a redline are attached hereto as Exhibits A and B. A proposed form of order is also
7 submitted herewith.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. The Court should grant leave to amend to substitute the real party in interest as
10 plaintiff.**

11 **A. Background: ELR is the real party in interest under Arizona Rule of Civil
12 Procedure 17(a).**

13 ELR is the real party in interest under Ariz. R. Civ. P. 17(a) because it is the assignee of
14 the claims in this litigation.

15 After Defendants caused the events giving rise to the claims asserted in this litigation,
16 Epicenter and GMF commenced Chapter 11 bankruptcy cases in the United States Bankruptcy
17 Court for the District of Arizona, Case Nos. 2:16-bk-05493-MCW and 2:16-bk-05494-MCW.
18 Pursuant to the “Order Confirming Third Amended Joint Plan of Reorganization with
19 Stipulated and Non-Adverse Modifications Proposed by CPF Vaseo Associates, LLC” dated
20 May 1, 2018, the Trustee was authorized to pursue these claims, among others.

21 On August 22, 2018, the Bankruptcy Court approved a settlement of certain disputed
22 claims. Under the terms of the settlement, the Liquidating Trustee was authorized to abandon
23 the claims giving rise to this litigation to “[Epicenter and GMF], Bruce Gray, or their
24 assigns[.]” See Order, Exhibit C. On September 10, 2018, Epicenter and GMF executed the
25 assignment of the claims listed in the First Amended Complaint to ELR. See Assignment,
26 Exhibit D (exhibit to assignment omitted). Because ELR is the assignee of the substantive
27 claims giving rise to this litigation, ELR is the real party in interest under Rule 17(a).
28

1 **B. The proposed amendment is appropriate under Rule 15.**

2 Rule 15 is the procedural mechanism through which a party can amend to substitute the
3 real party in interest. *See Carranza v. Madrigal*, 237 Ariz. 512, 513, ¶ 1, 354 P.3d 389, 390
4 (2015). The Trustee therefore seeks leave to file the Second Amended Complaint pursuant to
5 Ariz. R. Civ. P. 15(a)(2), to complete the substitution of ELR as the real party in interest.¹
6 That rule provides that leave to amend should be freely granted when justice requires it.
7 Amendments to pleadings should be permitted unless there is undue delay, bad faith, undue
8 prejudice, or futility. *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913 P.2d 1097, 1103 (App.
9 1996).

10 Here, none of the factors that would weigh against amendment of the complaint are
11 present. Defendants have been on notice that this lawsuit was forthcoming since counsel for
12 Ganymede (which was a subsidiary of Burford) communicated with Epicenter and GMF in
13 2016 regarding an adversary proceeding that was related to this litigation. *See* Declaration of
14 James Camoriano, Exhibit E, ¶¶ 2-3. The Trustee later provided filings from this case to the
15 same counsel.² Moreover, Defendants would not be prejudiced by the Second Amended
16 Complaint, as they have not yet appeared, and so have not yet begun efforts to defend the
17 claims. The substantive claims themselves remain unchanged from the First Amended
18 Complaint, in any event. Furthermore, no element of undue delay is present here. The Court
19 previously extended the deadline for service in this case to permit the claim to be disposed of
20 through the Bankruptcy Court. *See* Motion to Extend, filed July 5, 2018; Order, filed July 12,
21 2018. The order disposing of the claims was just entered on August 22, 2018, and the claims
22 were assigned to ELR on September 10, 2018. This motion has been filed less than five days
23 later. Because there are no issues of notice, prejudice, or undue delay that would adversely
24 affect Defendants and the interests of justice would be served by amending the complaint, this
25

26
27 ¹ The Trustee previously filed its First Amended Complaint as of right.

28 ² At that time, that counsel responded that it had not been retained for this litigation.

1 Court should grant Plaintiff leave to file the Second Amended Complaint and substitute ELR
2 as the real party in interest.

3 **II. The Court should extend the deadline for service due to the time it will take to**
4 **accomplish service pursuant to the Hague Service Convention, and allow service**
5 **upon Ganymede by alternate means.**

6 The Trustee previously obtained an extension of time to accomplish service, after
7 explaining that it wished to avoid having the bankruptcy estate bear the anticipated expenses of
8 serving Defendants in Guernsey. *See* Motion to Extend, filed July 5, 2018; Order, filed July
9 12, 2018. Instead, the Trustee stated that whoever acquired the claim should bear that cost.
10 Consequently, the Court extended the time for service through October 8, 2018. *See* Order,
11 filed July 12, 2018.

12 ELR has now investigated service of Defendants, and anticipates it will take up to four
13 months to do so. Guernsey is a party to the Hague Convention on the Service Abroad of
14 Judicial and Extra-Judicial Documents in Civil or Commercial Matters (the “Hague
15 Convention”). Courts have frequently acknowledged that the length of time required for
16 service under the Hague Convention can often take many months to accomplish. *See Brown v.*
17 *China Integrated Energy, Inc.*, 285 F.R.D. 560, 562–66 (C.D. Cal. 2012) (noting that service
18 of defendant under the Hague Convention would take four to six months); *see also In GLG Life*
19 *tech Corp Securities Litigation*, 287 F.R.D. 262, 266 (S.D.N.Y. 2012) (the length of time
20 required for service under the Hague Convention could take “approximately six to eight
21 months”). ELR’s intended process server has informed it that service of process as is required
22 here could take up to four months. *See* Declaration of James Camoriano, Exhibit E at ¶¶ 4-7.
23 Accordingly, an in an abundance of caution, Plaintiff requests that this Court grant a six-month
24 extension of time to accomplish service of process.

25 Service upon Ganymede will entail additional effort. Since Ganymede is a dissolved
26 entity and does not have a currently known address, the Hague Convention does not govern
27 service upon it. *See* Hague Convention, Article 1 (“The Convention shall not apply where the
28 address of the person to be served with the document is not known”); *see also Cardona v.*

1 *Kreamer*, 255 Ariz. 143, 145, ¶ 8, 235 P.3d 1026, 1028 (2010) (quoting Hague Convention,
2 Article 1); *see also Southwest Metals Co. v. Snedaker*, 59 Ariz. 374, 377-378, 129 P.3d 314,
3 319-230 (1942) (for service of process purposes, a dissolved corporation has no address or
4 residence). Therefore, because (1) Ganymede's last known address was outside the state of
5 Arizona³, (2) locating a currently valid address for Ganymede is impossible due to its dissolved
6 entity status, (3) service by publication is the best means practicable under these circumstances
7 for providing notice to Ganymede, and (4) service by publication is not prohibited by
8 international agreement, Plaintiff seeks leave of this Court for ELR to effect service of process
9 upon Ganymede by online publication pursuant to Ariz. R. Civ. P. 4.2(f) and 4.2(i)(2)(D).
10 Process would be served via posting service of the summons continuously for three
11 consecutive months in the online legal notice publication, Global Legal Notices, a website of
12 general circulation which specializes in service by publication. *See* Declaration of James
13 Camoriano, Exhibit E at ¶¶ 6-8 (Guernsey process server informed counsel this is a typical
14 method of service under the circumstances).

15 The Arizona Supreme Court and many other jurisdictions have blessed service by
16 publication as the best available means of serving defendants outside of Arizona and the
17 United States when the defendant's address is unknown. *See Snedaker*, 59 Ariz. at 383, 129
18 P.2d at 318 (approving service on a dissolved Delaware corporation by publication); *accord*
19 *Kott v. Superior Court*, 53 Cal.Rptr.2d 215, 220 (Cal. App. 1996); *Eto v. Muranaka*, 57 P.3d
20 413, 423-424 (Haw. 2002); *S.E.C. v. Shehyn*, 2008 WL 6150322, 4 (S.D.N.Y. 2008).

21 This Court should permit service of process via publication by electronic means, as it is
22 reasonably calculated to give notice and is not prohibited by international agreement. ELR's
23 intended process server's method of service by online publication entails publishing the
24 Complaint, Summons, Order, any notices, and all court-issued documents continuously on the
25 online legal notice publication Global Legal Notices for a period of three consecutive months,

26 ³ During its corporate existence, Ganymede's principal place of business was Regency Court,
27 Glategny Esplanade, St. Peter Port, Guernsey GY1 1WW.

1 which far exceeds Arizona's statutory timeframe for accomplishing traditional service by
2 publication.⁴ See Declaration of James Camoriano, Exhibit E at ¶¶ 6-8. Moreover, Global
3 Legal Notices would implement additional measures to provide notice to Ganymede by (1)
4 utilizing a system which allows for defendants to Google their own name and locate the legal
5 notice publication, and (2) providing a link to the actual service documents, a feature not
6 offered by traditional newspapers for publication. In essence, this method provides a greater
7 opportunity to give actual notice to Ganymede than service by publication in a traditional
8 newspaper. For these reasons, this Court should permit ELR to effect service of process upon
9 Ganymede through online publication.

10 To ensure Ganymede gets actual notice, Plaintiff additionally proposes to serve process
11 by emailing it to Defendants' counsel at Perkins Coie LLP. Though Perkins Coie had, at one
12 time previously, stated it had not been retained to represent Defendants in this matter, Perkins
13 Coie more recently represented Defendants in negotiating with the Trustee to acquire the
14 claims that are the subject of this lawsuit. After that, Perkins Coie wrote to counsel stating that
15 "[w]hile we are still not currently authorized to accept service, I'm writing to let you know that
16 we are looking into the question with our clients [*i.e.*, Burford and Ganymede] and may have
17 additional information for you within the next few weeks." See Email, Exhibit F. Since
18 Perkins Coie represents Defendants (whether relating to this case, as this recent email suggests;
19 or just on other matters), Perkins Coie will presumably send the process to Defendants and
20 thereby give them actual notice of this matter.

21 **III. Conclusion.**

22 Based on the foregoing, Plaintiff respectfully requests that this Court authorize the filing
23 of the attached proposed Second Amended Complaint to substitute ELR as the real party in
24 interest under Rule 17(a), and grant ELR a six-month extension of time to serve Defendants

25 ⁴ Ariz. R. Civ. P. 4.2(f)(2)(A) provides that "[s]ervice by publication is accomplished by
26 publishing the summons and a statement describing how a copy of the pleading being served
27 may be obtained at least once a week for *4 successive weeks* in a newspaper published in the
28 county where the action is pending" (emphasis added).

1 under Ariz. R. Civ. P. 4.2(k), in the manner outlined above. A proposed form of order is
2 submitted herewith.

3 RESPECTFULLY SUBMITTED this 14th day of September, 2018.

4 **STINSON LEO/NARD STREET LLP**

5 By: /s/ Stefan M. Palys

6 Michael C. Manning

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13 ORIGINAL e-filed via AZTurboCourt
14 this 14th day of September, 2018:

15 Clerk of the Court
16 Maricopa County Superior Court
17 101/201 West Jefferson
18 Phoenix, Arizona 85003

19 Copy e-delivered via AZTurboCourt this
20 14th day of September, 2018, to

21 The Honorable Timothy Thomason
22 Maricopa County Superior Court

23 /s/ Cynthia Fischer

EXHIBIT A

EXHIBIT A

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10 **SUPERIOR COURT OF ARIZONA**
11 **MARICOPA COUNTY**

12 Epicenter Loss Recovery, L.L.C.,
13 Plaintiff,

No.: CV2018-007464

14 vs.

**SECOND AMENDED
COMPLAINT**

15 BURFORD CAPITAL LTD., and
16 GANYMEDE INVESTMENTS LTD.,

(Commercial Court Eligible)

17 Defendants.

(Assigned to Hon. Timothy
Thomason)

18
19
20 Plaintiff Epicenter Loss Recovery, L.L.C. (hereinafter "Plaintiff") alleges as follows:

21 **PARTIES, JURISDICTION AND VENUE**

22
23 1. Epicenter Partners LLC ("Epicenter") and Gray Meyer Fannin LLC ("Gray") are
24 both Arizona limited liability companies that did business in Maricopa County, Arizona at all
25 times relevant to the events giving rise to this complaint.

26 2. Burford Capital Ltd. ("Burford") is a litigation finance company organized under
27 the laws of Guernsey.
28

1 3. Ganymede Investments Ltd. (“Ganymede”) is a closed-ended investment
2 company organized under the laws of Guernsey. Upon information and belief, Ganymede has
3 never had any employees, agents, offices, or operations. Instead, it was a single-asset shell
4 company that acted through, was controlled by, and was directed by, Burford.

5 4. Burford and Ganymede (collectively “Defendants”) caused acts or events to
6 occur in Maricopa County, Arizona, out of which Plaintiffs’ claims arise.

7 5. The Court has personal jurisdiction over the parties in this lawsuit.

8 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

9 7. This Court has jurisdiction over the subject matter of this action pursuant to
10 Article VI, § 14 of the Arizona Constitution and A.R.S. § 12-123.

11 8. Epicenter and Gray each commenced a bankruptcy case in the United States
12 Bankruptcy Court for the District of Arizona, Case Nos. 2:16-bk-05493-MCW and 2:16-bk-
13 05494-MCW, on May 16, 2016.

14 9. Pursuant to the “Order Confirming Third Amended Joint Plan of Reorganization
15 with Stipulated and Non-Adverse Modifications Proposed by CPF Vaseo Associates, LLC,”
16 ROI Properties, Inc., as Liquidating Trustee, became authorized to pursue the claims listed
17 below on behalf of Epicenter and Gray on May 1, 2018.

18 10. On August 22, 2018, the United States Bankruptcy Court for the District of
19 Arizona approved a settlement of disputed claims. Under the terms of the settlement, ROI
20 Properties, Inc. became expressly authorized to abandon the claims listed below to Epicenter,
21 Gray, or their assigns. ROI Properties, Inc. abandoned the claims listed below to Epicenter and
22 Gray pursuant to this settlement.

23 11. On August 31, 2018, Epicenter and Gray executed the assignment of the claims
24 listed below to Plaintiff, which now owns these claims.

25 **A. The NPP Litigation.**

26 12. On July 7, 1993, Northeast Phoenix Partners (“NPP”) entered into Commercial
27 Lease No. 03-52415 with the State of Arizona through the State Land Commissioner regarding
28

1 approximately 5,700 acres of real property in Phoenix, Arizona located north of the Central
2 Arizona Project Canal and south of Pinnacle Peak Road between 32nd Street and 64th Street.

3 13. NPP filed a special action appeal of a City of Phoenix Board of Adjustment
4 decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge Community*
5 *Association, et al. v. City of Phoenix, et al.*, Case No. LC2007-000011 (the “Action”).

6 14. Epicenter and Gray filed a Counterclaim, First Amended Counterclaim, and
7 Second Amended Counterclaim in the Action against NPP, Desert Ridge Community
8 Association (“DRCA”), and CityNorth, LLC (“CityNorth”). These counterclaims are
9 hereafter collectively referred to as the “Litigation Claim.”

10 15. Simpson Thacher & Bartlett, LLP (“STB”) represented Epicenter and Gray in
11 the Action.

12 **B. STB Requires Funding—the 2009 Agreement.**

13 16. From April 30, 2009 through November 20, 2009, STB had been paid
14 \$1,162,885.76 in fees and costs.

15 17. Nevertheless, in December 2009, STB told Epicenter and Gray that STB would
16 withdraw the next morning unless Epicenter and Gray obtained litigation financing from
17 Burford to immediately pay STB.

18 18. Epicenter and Gray attempted to negotiate with Burford for litigation funding.

19 19. During the course of these negotiations, Ganymede did not yet exist.

20 20. Ganymede was not formed until December 22, 2009.

21 21. Ganymede was formed for the sole purpose of acting as the counter-party on the
22 agreements described herein.

23 22. During the course of the negotiations, Burford would not entertain or make any
24 revisions or changes to the agreement forms. The terms were presented on a take-it-or-leave it
25 basis.

1 23. On December 22, 2009, the day Burford ostensibly formed Ganymede,
2 Epicenter and Gray entered into a Forward Purchase Agreement with it regarding the
3 Litigation Claim (“2009 Agreement”).

4 24. Through the 2009 Agreement, Defendants agreed to provide \$5 million in
5 funding to be applied to STB’s fees in exchange for Epicenter and Gray granting a contingent
6 interest in any recovery from the Litigation Claim.

7 25. On December 22, 2009, STB amended its engagement letter with Epicenter and
8 Gray. The amendment was negotiated between Defendants and STB without Epicenter’s and
9 Gray’s participation, and was thereafter presented to Epicenter and Gray as a negotiated
10 agreement, in which Epicenter and Gray had no choice.

11 26. The December 22, 2009 letter provided that STB would reimburse itself for all
12 past due fees and disbursements, and would deduct future invoices, from the \$4 million
13 deposit from Defendants; and that, in the event of a judgment in excess of a stated amount,
14 STB would be entitled to a fee “premium.”

15 27. Once STB starting receiving payment from Defendants, STB’s billings rose
16 suddenly and dramatically in amount, so that they were quickly triple the amount of the prior
17 billings.

18 28. Defendants made no effort to control litigation costs with STB, though they had
19 the right to do so.

20 29. In May 2010, less than five months after the 2009 Agreement, Epicenter and
21 Gray reached a settlement of a portion of the Litigation Claim with DRCA for approximately
22 \$6,000,000, of which \$4,000,000 was paid to Defendants. The other \$2 million, on
23 information and belief, was paid to STB for invoices owed.

24 30. Consequently, less than five months after execution of the December 2009
25 Agreement, Defendants were repaid such that their net cash investment was \$1,000,000, for
26 which the 2009 Agreement granted them a 40% interest in the Litigation Claim.

27 **C. The 2010 Agreement.**
28

1 31. STB's bills continued to rise, unchecked by Defendants.

2 32. STB continued to threaten to resign unless Epicenter and Gray entered into
3 further agreements with Defendants so Epicenter and Gray were forced to do so.

4 33. The parties entered into a Restated and Amended Forward Purchase Agreement
5 regarding the Litigation Claim on August 3, 2010 (the "2010 Agreement").¹

6 34. Under the 2010 Agreement, Defendants agreed to increase their funding of STB,
7 in exchange for additional returns from the Litigation Claim.

8 35. On October 19, 2010, Epicenter and Gray obtained final judgment in the State
9 Court on the Litigation Claim against NPP and CityNorth in the amount of \$110,658,800 plus
10 interest.

11 36. After this time, STB continued to represent Epicenter and Gray to collect on this
12 judgment.

13 37. During post-judgment collections, STB continued to charge Epicenter and Gray
14 exorbitant fees and threaten to withdraw if they were not quickly paid, as a result of which
15 Epicenter and Gray were forced to enter into further agreements with Defendants in January,
16 October, and December of 2011. The amendments entitled Defendants to greater returns from
17 the Litigation Claim, and extended the deadlines for payment.

18 38. By December 2011, Defendants had paid \$6,775,000 in legal fees, but had been
19 repaid all but \$2,775,000 of that amount.

20 **D. Settlement of the Litigation Claim With NPP and Execution of Notes.**

21 39. On May 31, 2012, Epicenter and Gray negotiated a Settlement Agreement with
22 respect to the Litigation Claim which provided that Epicenter and Gray would receive an
23 Assignment of the Lessee's Rights under the terms of the Arizona State Land Department
24 ("ASLD") Commercial Lease No. 03-52415, the assignment of the Master Development
25
26

27 ¹ Capitalized terms that are not otherwise defined in this complaint have the meaning ascribed
28 to them in the referenced contracts.

1 Rights, the assignment of the Declarant's Rights and all intellectual property related thereto
2 (collectively, such property interests shall hereafter be referred to as the "Estates' Property").

3 40. Upon information and belief, at this time the real estate portion of the Estates'
4 Property alone was worth well in excess of \$100 million.

5 41. Immediately upon learning of the NPP settlement, Defendants began demanding
6 immediate cash payment from Epicenter and Gray based on the incorrect position that the
7 agreements required cash payment upon settlement.

8 42. The settlement, however, transferred the lessee's rights under Commercial Lease
9 No. 03-52415 to Epicenter and Gray, and so was not a settlement that included a payment of
10 cash.

11 43. Nevertheless, Defendants threatened to declare a default under the agreements
12 with Epicenter and Gray and sue Epicenter and Gray if Epicenter and Gray did not agree to a
13 resolution.

14 44. Defendants and Epicenter and Gray therefore executed an "Outline of Terms"
15 dated December 12, 2012. In that Outline, Defendants set forth terms under which they
16 proposed to convert the Preferred Return plus 40% "interest" in the Litigation Claim (referred
17 to in the 2011 Supplemental Agreement as the Resolution Amount), into a "Liquidated Sum."
18 Following is the critical information contained in or related to the Outline of Terms:

19 a. The Outline of Terms states that, "[a]s of September 30, 2012, the total
20 amount owing by Gray (Debtors) to Ganymede (Ganymede) is agreed to be
21 \$50,713,000 ('Liquidated Sum'). The Liquidated Sum shall be subject to a
22 discount for early payment as set forth on the attached Exhibit 'A' and shall be
23 decreased by the amount of any Net Proceeds and Gray Cash Payments as
24 defined below. The Discount for early payment shall apply only if the payment
25 is made by the applicable date set forth on Exhibit A."

26 b. At the date of the Outline of Terms, Exhibit A to the Outline of Terms would
27 have required payment to Defendants of \$16,419,000.
28

1 c. The Outline of Terms required the Total Amount to be secured by a first
2 position deed of trust on, and a lien upon, all of the Estates' Property, not just
3 40% of the Estates' Property.

4 d. The Outline of Terms required payment of \$37,612,000 by December 31,
5 2015, or declared that the Total Amount would thereafter bear interest at 35%
6 compounded monthly.

7 45. Epicenter and Gray executed a Promissory Note dated April 22, 2013, in the
8 amount of \$50,713,000 (the "Note"). The Note states that it is governed by Arizona law.

9 46. Defendants concocted the contrived "debt" structure and the fictitious
10 \$50,713,000 amount owed. In part, such structure was demanded by Defendants for the
11 purpose of minimizing United States taxes. In fact, at the time the Note was executed, the net
12 amount loaned by Defendants was only \$2,775,000. Reflecting that amount as the debt,
13 however, would have shown that Defendants were subject to taxable gains on the \$47,938,000
14 profit they stood to make on the Note.

15 47. Defendants did not advance any additional funds to or for the benefit of
16 Epicenter and Gray at the time the Note was executed.

17 48. Epicenter and Gray executed a deed of trust to secure the Note, which
18 encumbered all of the Estates' Property. That deed of trust states that it is governed by
19 Arizona law, and it was recorded with the Maricopa County Recorder.

20 49. On September 26, 2013, Epicenter and Gray and Defendants entered into an
21 agreement through which Ganymede received payment of \$1,349,233 in exchange for a
22 release of a portion of property from the deed of trust.

23 50. After that payment, the net capital invested by Defendants in the pursuit of the
24 Litigation Claim by Epicenter and Gray was, on information and belief, approximately
25 \$1,425,767.

1 **E. Defendants Publicly Market the Note, Harming Epicenter and Gray.**

2 51. Upon information and belief, by March 2015, and despite their custom and
3 practice of modifying and extending Epicenter's and Gray's payment obligations, Defendants
4 decided that they did not wish to even wait until the maturity date of the Note to get repaid.

5 52. At this time, Epicenter and Gray were not in default of any obligations under the
6 Note.

7 53. Instead, upon information and belief, Defendants decided that they would rather
8 sell the Note at a discount than wait for payment in full. At the time, Defendants only had an
9 investment of approximately \$1.43 million in a note with a face amount of more than \$50
10 million.

11 54. In or around March 2015, Defendants began an aggressive and highly public
12 advertisement of the Note.

13 55. Defendants hired a broker, HFF, to help them market the Note.

14 56. HFF's marketing materials were publicly circulated with one or more widely
15 disseminated email "blasts" that went to virtually everyone who was even tangentially
16 connected to the Phoenix real estate market.

17 57. Upon information and belief, an agent of Burford acting for the benefit of all
18 Defendants instructed HFF to send the email blast to its vast group of recipients.

19 58. Upon information and belief, Defendants gave this instruction despite knowing
20 Epicenter and Gray were actively engaged in negotiations with credible buyers and
21 simultaneously working with prospective lenders to satisfy the Note.

22 59. The HFF materials stated that the asking price for the \$50 million Note was
23 \$30.6 million.

24 60. Defendants knew, or should have known, that advertising the Note at an asking
25 price well below the Note's face value would signal to participants in the Arizona real estate
26 market – including all recipients of the email blast – that Epicenter and Gray were in financial
27 distress.

1 61. In the face of that unmistakable signal, no reasonable buyer would enter into a
2 transaction with Epicenter and Gray because of the perceived risk that Epicenter and Gray
3 would default.

4 62. Similarly, no buyer would pay a market price for the real property collateral
5 (which was worth several times the face amount of the Note), or refinance the debt (with face
6 amounts of \$50,713,000 and \$2,956,703.66) when the senior note was being advertised on the
7 open market for \$30.6 million.

8 63. It was obvious to prospective purchasers that a price of \$30.6 million for the
9 Note and deed of trust could, upon default, translate to a price of \$7.28/square foot for the real
10 estate – 75-85% less than the land was actually worth at that time.

11 64. Upon information and belief, Defendants additionally authorized HFF to widely
12 disseminate the Note. Consequently, prospective buyers and lenders knew the interest rate
13 Epicenter and Gray were paying. With knowledge of that rate, prospective buyers no longer
14 wished to deal with Epicenter and Gray as those buyers thought Epicenter and Gray were at
15 imminent risk of default, at which time buyers could purchase the land for far less than its
16 market value. Additionally, lenders who had previously been negotiating low double-digit
17 rates suddenly demanded exponentially more.

18 65. Consequently, Defendants' marketing efforts, including the email blast,
19 prevented Epicenter and Gray from entering into a transaction through which they could have
20 refinanced or extinguished the Note.

21 66. Prior to HFF's email blast, the Arizona real estate market had begun to show
22 signs of recovery.

23 67. The HFF marketing immediately caused the Estates' Property and Epicenter and
24 Gray themselves to be viewed as distressed.

25 68. HFF, at Defendants' direction and with their consent, included the maturity date
26 of the Note in its email blast.

27
28

69. As a result, the market became aware of the Note's December 31, 2015 maturity date. The market was unaware of such information prior to the HFF marketing and its highly public "email blasts." Epicenter's and Gray's ability to protect their interests by selling a portion of the Estates' Property to satisfy or refinance the Ganymede Note was destroyed virtually overnight.

70. On January 14, 2016, a Notice of Trustee's Sale and Notification of Disposition of Personal Property was recorded with the Maricopa County Recorder (2016-0026295) regarding approximately 98 acres of vacant property located west of 56th Street and north of the Loop 101 in Phoenix, Arizona (Tax parcel no. 212-32-100G) and the balance of the Estates' Property. Epicenter and Gray would have lost the Estates' Property through that sale.

F. Defendants Sell the Claims to CPF.

71. CPF Vaseo Associates, LLC (“CPF”) and Defendants entered into a Sale and Assignment Agreement, dated March 23, 2016 (hereafter, the “Sale Agreement”).

72. Under that Sale Agreement, CPF contracted to purchase the claims of Defendants, who had by then acquired STB's claim, for a very substantial discount.

73. On March 30, 2016, after signing the Sale Agreement, CPF was so pleased with the purchase terms that Mr. Robert Flaxman (on behalf of CPF) contacted a possible investor by email stating that, “I have a juicy new deal. Deep distress and big upside. When can we connect?”

74. On May 13, 2016, counsel for CPF sent correspondence to counsel for Epicenter and Gray notifying Epicenter and Gray that the claimed payoff amount as of May 16, 2016 for the Note was a total of \$54,853,149.17, plus interest accruing at \$52,440.74 per day thereafter. The same correspondence notified Epicenter and Gray that the claimed payoff amount for the STB Note as of May 16, 2016 was \$3,674,319.86, plus interest accruing at \$610.76 per day thereafter.

COUNT I

Declaratory Relief

1 75. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

2 76. Upon information and belief, Ganymede was inadequately capitalized for its
3 business.

4 77. At all times relevant to this litigation, Ganymede failed to maintain corporate
5 formalities.

6 78. At all times relevant to this litigation, Burford continuously demonstrated a
7 complete and utter lack of adherence to the separate legal personalities of itself and Ganymede
8 by making all high-level decisions on Ganymede's behalf in its dealings with Epicenter and
9 Gray.

10 79. Further, upon information and belief, Burford and Ganymede failed to honor
11 Ganymede's corporate form.

12 80. Burford exercised substantially total control over the management and activities
13 of Ganymede during Ganymede's entire existence as a corporate legal entity. Ganymede had
14 no separate mind, will, or existence of its own, but instead its sole purpose was to serve as a
15 business conduit for Burford during its dealings with Epicenter and Gray.

16 81. During the dealings with Epicenter and Gray in which Ganymede was the named
17 party to the agreements, Burford representatives completely disregarded Ganymede's separate
18 legal personality by directly communicating with Epicenter and Gray on Ganymede's behalf,
19 approving Ganymede's transactions through Burford's own board, and referring to Burford as
20 Epicenter's and Gray's creditor despite Ganymede's status as the secured party of record.

21 82. For example, in discussions about the necessity of a "pre-negotiation letter" and
22 the terms therein, Epicenter and Gray negotiated and communicated exclusively with Burford.

23 83. In the discussions addressing the terms of the pre-negotiation letter, Burford
24 informed Epicenter and Gray that "[w]e are not asking you to give up rights you now have (we
25 don't see how you could possibly have a claim against us). We simply want you to
26 acknowledge that the debt is coming due and you don't have claims against us – a standard
27
28

1 request for a creditor whose debtor wants to negotiate a forbearance.” The person writing the
2 word “we” worked for Burford and was using it to refer to Burford, not Ganymede.

3 84. In discussions addressing Epicenter’s and Gray’s closing of an outlet mall sale to
4 pay down the Note, Burford mentioned the Burford board’s ability to vary the terms of the
5 deal as well as the Burford board’s desire to gain extra returns on the deal if the closing were
6 delayed beyond September 2014.

7 85. In the discussions addressing Epicenter’s and Gray’s paydown of the Note,
8 Burford informed Epicenter and Gray that Burford and STB had reached an agreement that
9 permitted Burford, not Ganymede, to accept an offer by a particular date and have Epicenter
10 and Gray roll the STB Note into a new note for the same value with new security.

11 86. In the discussions addressing Epicenter and Gray’s paydown of the Note,
12 Burford informed Epicenter and Gray that Burford’s board had given their final approval and
13 the deal was ready to close.

14 87. In later negotiations relating to Ganymede’s Note, on which Ganymede was the
15 payee, Burford told Epicenter and Gray that their “ideal source of financing would be an entity
16 with a lower cost of capital, and lower return expectations than Burford.”

17 88. Burford intended to utilize Ganymede as nothing more than a shell company,
18 and made these intentions known by approving Ganymede’s purported transactions with its
19 own board as well as referring to itself as Epicenter’s and Gray’s creditor despite Ganymede’s
20 status as the secured party of record.

21 89. Observance of the separate legal personalities of Burford and Ganymede would
22 sanction fraud and promote injustice against Epicenter and Gray.

23 90. Epicenter and Gray are entitled to pierce the corporate veil between Burford and
24 Ganymede, and hold Burford liable for all damages suffered by Epicenter and Gray as a result
25 of its conduct.

26 91. Epicenter and Gray are entitled to a declaration that Ganymede’s corporate veil
27 may be disregarded as a mere alter ego of Burford.

1 92. Disregarding Ganymede's separate legal status is necessary to prevent injustice.

2 93. There is an actual and justiciable controversy between Epicenter and Gray and
3 Defendants concerning whether Burford owes Epicenter and Gray a contractual duty of good
4 faith and fair dealing under the Note.

5 94. Epicenter and Gray are entitled to a declaration that Burford owed Epicenter and
6 Gray a contractual duty of good faith and fair dealing pursuant to the Note.

7 95. This declaratory judgment action arises out of contract, so Epicenter and Gray
8 are entitled to attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

9 **COUNT II**

10 **Breach of the Duty of Good Faith and Fair Dealing**

11 96. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

12 97. The duty to comply with the implied covenant of good faith and fair dealing is
13 implied in all contracts, including the Note.

14 98. Defendants breached their duty of good faith and fair dealing by taking actions
15 inconsistent with the agreed upon purpose and reasonable expectations of the parties when
16 entering into the Note.

17 99. Under the Note, Epicenter and Gray were to have the benefit of the originally
18 advanced funds, with no obligation to repay until the agreed-upon maturity date.

19 100. Defendants established a routine practice of granting extensions to the maturity
20 date during the parties' prior course of dealing.

21 101. Then, without notice to Epicenter and Gray, Defendants decided that they did
22 not want to wait even for the maturity date to be repaid.

23 102. Defendants decided they would instead prefer to get paid sooner, and therefore
24 took steps to suggest to participants in the Arizona real estate market that the debt was
25 distressed. Defendants were willing to accept less than face value for the Note because
26 Defendants only had a net investment of approximately \$1.43 million in the Note, and
27
28

1 consequently would reap an enormous profit even if they sold their interest for less than the
2 \$50 million face amount.

3 103. Defendants knew that doing this would prevent Epicenter and Gray from
4 engaging in an orderly liquidation of a portion of the Estates' Property or the refinancing
5 necessary to satisfy the Note.

6 104. Defendants knew that Epicenter and Gray would instead become likely to lose
7 all of the Estates' Property.

8 105. Defendants breached the duty of good faith and fair dealing by interfering with
9 Epicenter's and Gray's ability and right to repay the Note when due.

10 106. As a direct and proximate cause of Defendants' conduct, Epicenter and Gray
11 were damaged in an amount to be proven at trial, but in excess of \$200 million through the
12 loss of the Estates' Property.

13 107. These damages arose naturally from Defendants' breach of the duty of good
14 faith and fair dealing, were foreseeable, and were reasonably within the contemplation of the
15 parties at the time they entered into the Note.

16 **COUNT III**

17 **Tortious Interference with Prospective Business Expectancy**

18 108. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

19 109. Epicenter and Gray had a valid business expectancy in selling part of the
20 Estates' Property to pay off or refinance the Note.

21 110. Burford was aware that Epicenter and Gray had a valid business expectancy in
22 selling part of the Estates' Property to satisfy or refinance the Note.

23 111. Burford knew that Epicenter and Gray were in on-going negotiations with
24 specific buyers to sell part of the Estates' Property to satisfy or refinance the Note.

25 112. While knowing of Epicenter's and Gray's valid business expectancy and on-
26 going negotiations with prospective purchasers, Burford directed HFF to send the email
27 "blast" advertising the Note for sale at a substantial discount.

1 113. Through its publicly broadcasted marketing efforts, including the HFF email
2 blast, Burford intentionally and wrongfully interfered with Epicenter's and Gray's ability to
3 market the Estates' Property, and thereby destroyed Epicenter's and Gray's prospective
4 business expectancy.

5 114. As a direct and proximate result of Burford's tortious interference with
6 Epicenter's and Gray's valid business expectancy, Epicenter and Gray have suffered damages
7 in an amount to be determined at trial, but in excess of \$200 million.

8 **DAMAGES**

9 Wherefore, Plaintiff prays for entry of a judgment granting relief as follows:

- 10 A. For orders declaring the parties' rights in Plaintiff's favor as described above;
11 B. For damages in an amount to be proven at trial;
12 C. For pre- and post-judgment interest;
13 D. Costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01; and
14 E. For such other and further relief as the Court determines just and necessary to
15 provide Plaintiffs with a complete remedy under the circumstances.

16 RESPECTFULLY SUBMITTED this 14th day of September, 2018.

17
18 **STINSON LEONARD STREET LLP**

19 /s/ Stefan M. Palys

20 Michael C. Manning

21 Jeffrey J. Goulder

22 Stefan M. Palys

23 James Camoriano

24 1850 N Central Ave., Ste. 2100

25 Phoenix, AZ 85004

26 *Attorneys for Plaintiff*

27 ORIGINAL e-filed via AZTurboCourt
28 this 14th day of September, 2018:

1 Clerk of the Court
2 Maricopa County Superior Court
3 201 West Jefferson
4 Phoenix, Arizona 85003

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/s/ Cynthia Fischer

EXHIBIT B

EXHIBIT B

1 Michael C. Manning (#016255)
Jeffrey Goulder (#010258)
2 Stefan Palys (#024752)
James Camoriano (#034181)
3 **STINSON LEONARD STREET LLP**
4 1850 N. Central Avenue, Suite 2100
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stefan.palys@stinson.com
8 james.camoriano@stinson.com
9 *Attorneys for Plaintiff*

10 **SUPERIOR COURT OF ARIZONA**

11 **MARICOPA COUNTY**

12 ~~R.O.I. PROPERTIES, INC. as~~
13 ~~Liquidating Trustee of the estates of~~
14 ~~EPICENTER PARTNERS, L.L.C. and~~
15 ~~GRAY MEYER FANNIN~~ Epicenter
Loss Recovery, L.L.C.,

16 Plaintiff,

17 vs.

18 BURFORD CAPITAL LTD., and
19 GANYMEDE INVESTMENTS LTD.,

20 Defendants.

No.: CV2018-007464

~~FIRST~~ SECOND AMENDED
COMPLAINT

(Commercial Court Eligible)

(Assigned to Hon. Timothy
Thomason)

21 Plaintiff Epicenter Loss Recovery, L.L.C. (hereinafter "Plaintiff") alleges as follows:

22 **PARTIES, JURISDICTION AND VENUE**

23 1. Epicenter Partners LLC ("Epicenter") and Gray Meyer Fannin LLC ("Gray") are
24 both Arizona limited liability companies that did business in Maricopa County, Arizona at all
25 times relevant to the events giving rise to this complaint.

26 2. Burford Capital Ltd. ("Burford") is a litigation finance company organized under
27 the laws of Guernsey.
28

1 3. Ganymede Investments Ltd. (“Ganymede”) is a closed-ended investment
2 company organized under the laws of Guernsey. Upon information and belief, Ganymede has
3 never had any employees, agents, offices, or operations. Instead, it was a single-asset shell
4 company that acted through, was controlled by, and was directed by, Burford.

5 4. Burford and Ganymede (collectively “Defendants”) caused acts or events to
6 occur in Maricopa County, Arizona, out of which Plaintiffs’ claims arise.

7 5. The Court has personal jurisdiction over the parties in this lawsuit.

8 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

9 7. This Court has jurisdiction over the subject matter of this action pursuant to
10 Article VI, § 14 of the Arizona Constitution and A.R.S. § 12-123.

11 8. Epicenter and Gray each commenced a bankruptcy case in the United States
12 Bankruptcy Court for the District of Arizona, Case Nos. 2:16-bk-05493-MCW and 2:16-bk-
13 05494-MCW, on May 16, 2016.

14 9. Pursuant to the “Order Confirming Third Amended Joint Plan of Reorganization
15 with Stipulated and Non-Adverse Modifications Proposed by CPF Vaseo Associates, LLC,”
16 ROI Properties, Inc., as Liquidating Trustee (~~“Plaintiff”~~), is, became authorized to pursue the
17 claims listed below on behalf of Epicenter and Gray on May 1, 2018.

18 10. On August 22, 2018, the United States Bankruptcy Court for the District of
19 Arizona approved a settlement of disputed claims. Under the terms of the settlement, ROI
20 Properties, Inc. became expressly authorized to abandon the claims listed below to Epicenter,
21 Gray, or their assigns. ROI Properties, Inc. abandoned the claims listed below to Epicenter and
22 Gray pursuant to this settlement.

23 11. On August 31, 2018, Epicenter and Gray executed the assignment of the claims
24 listed below to Plaintiff, which now owns these claims.

25 **A. The NPP Litigation.**

26 12. 10.—On July 7, 1993, Northeast Phoenix Partners (“NPP”) entered into
27 Commercial Lease No. 03-52415 with the State of Arizona through the State Land
28

1 Commissioner regarding approximately 5,700 acres of real property in Phoenix, Arizona
2 located north of the Central Arizona Project Canal and south of Pinnacle Peak Road between
3 32nd Street and 64th Street.

4 13. ~~11.~~ NPP filed a special action appeal of a City of Phoenix Board of Adjustment
5 decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge Community*
6 *Association, et al. v. City of Phoenix, et al.*, Case No. LC2007-000011 (the “Action”).

7 14. ~~12.~~ Epicenter and Gray filed a Counterclaim, First Amended Counterclaim, and
8 Second Amended Counterclaim in the Action against NPP, Desert Ridge Community
9 Association (“DRCA”), and CityNorth, LLC (“CityNorth”). These counterclaims are hereafter
10 collectively referred to as the “Litigation Claim.”

11 15. ~~13.~~ Simpson Thacher & Bartlett, LLP (“STB”) represented Epicenter and Gray in
12 the Action.

13 **B. STB Requires Funding—the 2009 Agreement.**

14 16. ~~14.~~ From April 30, 2009 through November 20, 2009, STB had been paid
15 \$1,162,885.76 in fees and costs.

16 17. ~~15.~~ Nevertheless, in December 2009, STB told Epicenter and Gray that STB
17 would withdraw the next morning unless Epicenter and Gray obtained litigation financing from
18 Burford to immediately pay STB.

19 18. ~~16.~~ Epicenter and Gray attempted to negotiate with Burford for litigation
20 funding.

21 19. ~~17.~~ During the course of these negotiations, Ganymede did not yet exist.

22 20. ~~18.~~ Ganymede was not formed until December 22, 2009.

23 21. ~~19.~~ Ganymede was formed for the sole purpose of acting as the counter-party on
24 the agreements described herein.

25 22. ~~20.~~ During the course of the negotiations, Burford would not entertain or make
26 any revisions or changes to the agreement forms. The terms were presented on a take-it-or-
27 leave it basis.

1 23. ~~21.~~ On December 22, 2009, the day Burford ostensibly formed Ganymede,
2 Epicenter and Gray entered into a Forward Purchase Agreement with it regarding the
3 Litigation Claim (“2009 Agreement”).

4 24. ~~22.~~ Through the 2009 Agreement, Defendants agreed to provide \$5 million in
5 funding to be applied to STB’s fees in exchange for Epicenter and Gray granting a contingent
6 interest in any recovery from the Litigation Claim.

7 25. ~~23.~~ On December 22, 2009, STB amended its engagement letter with Epicenter
8 and Gray. The amendment was negotiated between Defendants and STB without Epicenter’s
9 and Gray’s participation, and was thereafter presented to Epicenter and Gray as a negotiated
10 agreement, in which Epicenter and Gray had no choice.

11 26. ~~24.~~ The December 22, 2009 letter provided that STB would reimburse itself for
12 all past due fees and disbursements, and would deduct future invoices, from the \$4 million
13 deposit from Defendants; and that, in the event of a judgment in excess of a stated amount,
14 STB would be entitled to a fee “premium.”

15 27. ~~25.~~ Once STB starting receiving payment from Defendants, STB’s billings rose
16 suddenly and dramatically in amount, so that they were quickly triple the amount of the prior
17 billings.

18 28. ~~26.~~ Defendants made no effort to control litigation costs with STB, though they
19 had the right to do so.

20 29. ~~27.~~ In May 2010, less than five months after the 2009 Agreement, Epicenter and
21 Gray reached a settlement of a portion of the Litigation Claim with DRCA for approximately
22 \$6,000,000, of which \$4,000,000 was paid to Defendants. The other \$2 million, on
23 information and belief, was paid to STB for invoices owed.

24 30. ~~28.~~ Consequently, less than five months after execution of the December 2009
25 Agreement, Defendants were repaid such that their net cash investment was \$1,000,000, for
26 which the 2009 Agreement granted them a 40% interest in the Litigation Claim.

27 **C. The 2010 Agreement.**

1 31. ~~29.~~ STB's bills continued to rise, unchecked by Defendants.

2 32. ~~30.~~ STB continued to threaten to resign unless Epicenter and Gray entered into
3 further agreements with Defendants so Epicenter and Gray were forced to do so.

4 33. ~~31.~~ The parties entered into a Restated and Amended Forward Purchase
5 Agreement regarding the Litigation Claim on August 3, 2010 (the "2010 Agreement").¹

6 34. ~~32.~~ Under the 2010 Agreement, Defendants agreed to increase their funding of
7 STB, in exchange for additional returns from the Litigation Claim.

8 35. ~~33.~~ On October 19, 2010, Epicenter and Gray obtained final judgment in the
9 State Court on the Litigation Claim against NPP and CityNorth in the amount of \$110,658,800
10 plus interest.

11 36. ~~34.~~ After this time, STB continued to represent Epicenter and Gray to collect on
12 this judgment.

13 37. ~~35.~~ During post-judgment collections, STB continued to charge Epicenter and
14 Gray exorbitant fees and threaten to withdraw if they were not quickly paid, as a result of
15 which Epicenter and Gray were forced to enter into further agreements with Defendants in
16 January, October, and December of 2011. The amendments entitled Defendants to greater
17 returns from the Litigation Claim, and extended the deadlines for payment.

18 38. ~~36.~~ By December 2011, Defendants had paid \$6,775,000 in legal fees, but had
19 been repaid all but \$2,775,000 of that amount.

20 **D. Settlement of the Litigation Claim With NPP and Execution of Notes.**

21 39. ~~37.~~ On May 31, 2012, Epicenter and Gray negotiated a Settlement Agreement
22 with respect to the Litigation Claim which provided that Epicenter and Gray would receive an
23 Assignment of the Lessee's Rights under the terms of the Arizona State Land Department
24 ("ASLD") Commercial Lease No. 03-52415, the assignment of the Master Development
25
26

27 ¹ Capitalized terms that are not otherwise defined in this complaint have the meaning ascribed
28 to them in the referenced contracts.

1 Rights, the assignment of the Declarant's Rights and all intellectual property related thereto
2 (collectively, such property interests shall hereafter be referred to as the "Estates' Property").

3 40. ~~38.~~ Upon information and belief, at this time the real estate portion of the
4 Estates' Property alone was worth well in excess of \$100 million.

5 41. ~~39.~~ Immediately upon learning of the NPP settlement, Defendants began
6 demanding immediate cash payment from Epicenter and Gray based on the incorrect position
7 that the agreements required cash payment upon settlement.

8 42. ~~40.~~ The settlement, however, transferred the lessee's rights under Commercial
9 Lease No. 03-52415 to Epicenter and Gray, and so was not a settlement that included a
10 payment of cash.

11 43. ~~41.~~ Nevertheless, Defendants threatened to declare a default under the
12 agreements with Epicenter and Gray and sue Epicenter and Gray if Epicenter and Gray did not
13 agree to a resolution.

14 44. ~~42.~~ Defendants and Epicenter and Gray therefore executed an "Outline of
15 Terms" dated December 12, 2012. In that Outline, Defendants set forth terms under which
16 they proposed to convert the Preferred Return plus 40% "interest" in the Litigation Claim
17 (referred to in the 2011 Supplemental Agreement as the Resolution Amount), into a
18 "Liquidated Sum." Following is the critical information contained in or related to the Outline
19 of Terms:

20 a. The Outline of Terms states that, "[a]s of September 30, 2012, the total
21 amount owing by Gray (Debtors) to Ganymede (Ganymede) is agreed to be
22 \$50,713,000 ('Liquidated Sum'). The Liquidated Sum shall be subject to a
23 discount for early payment as set forth on the attached Exhibit 'A' and shall be
24 decreased by the amount of any Net Proceeds and Gray Cash Payments as
25 defined below. The Discount for early payment shall apply only if the payment
26 is made by the applicable date set forth on Exhibit A."

1 b. At the date of the Outline of Terms, Exhibit A to the Outline of Terms would
2 have required payment to Defendants of \$16,419,000.

3 c. The Outline of Terms required the Total Amount to be secured by a first
4 position deed of trust on, and a lien upon, all of the Estates' Property, not just
5 40% of the Estates' Property.

6 d. The Outline of Terms required payment of \$37,612,000 by December 31,
7 2015, or declared that the Total Amount would thereafter bear interest at 35%
8 compounded monthly.

9 45. ~~43.~~ Epicenter and Gray executed a Promissory Note dated April 22, 2013, in the
10 amount of \$50,713,000 (the "Note"). The Note states that it is governed by Arizona law.

11 46. ~~44.~~ Defendants concocted the contrived "debt" structure and the fictitious
12 \$50,713,000 amount owed. In part, such structure was demanded by Defendants for the
13 purpose of minimizing United States taxes. In fact, at the time the Note was executed, the net
14 amount loaned by Defendants was only \$2,775,000. Reflecting that amount as the debt,
15 however, would have shown that Defendants were subject to taxable gains on the \$47,938,000
16 profit they stood to make on the Note.

17 47. ~~45.~~ Defendants did not advance any additional funds to or for the benefit of
18 Epicenter and Gray at the time the Note was executed.

19 48. ~~46.~~ Epicenter and Gray executed a deed of trust to secure the Note, which
20 encumbered all of the Estates' Property. That deed of trust states that it is governed by
21 Arizona law, and it was recorded with the Maricopa County Recorder.

22 49. ~~47.~~ On September 26, 2013, Epicenter and Gray and Defendants entered into an
23 agreement through which Ganymede received payment of \$1,349,233 in exchange for a release
24 of a portion of property from the deed of trust.

25 50. ~~48.~~ After that payment, the net capital invested by Defendants in the pursuit of
26 the Litigation Claim by Epicenter and Gray was, on information and belief, approximately
27 \$1,425,767.

1 **E. Defendants Publicly Market the Note, Harming Epicenter and Gray.**

2 51. ~~49.~~ Upon information and belief, by March 2015, and despite their custom and
3 practice of modifying and extending Epicenter's and Gray's payment obligations, Defendants
4 decided that they did not wish to even wait until the maturity date of the Note to get repaid.

5 52. ~~50.~~ At this time, Epicenter and Gray were not in default of any obligations under
6 the Note.

7 53. ~~51.~~ Instead, upon information and belief, Defendants decided that they would
8 rather sell the Note at a discount than wait for payment in full. At the time, Defendants only
9 had an investment of approximately \$1.43 million in a note with a face amount of more than
10 \$50 million.

11 54. ~~52.~~ In or around March 2015, Defendants began an aggressive and highly public
12 advertisement of the Note.

13 55. ~~53.~~ Defendants hired a broker, HFF, to help them market the Note.

14 56. ~~54.~~ HFF's marketing materials were publicly circulated with one or more widely
15 disseminated email "blasts" that went to virtually everyone who was even tangentially
16 connected to the Phoenix real estate market.

17 57. ~~55.~~ Upon information and belief, an agent of Burford acting for the benefit of all
18 Defendants instructed HFF to send the email blast to its vast group of recipients.

19 58. ~~56.~~ Upon information and belief, Defendants gave this instruction despite
20 knowing Epicenter and Gray were actively engaged in negotiations with credible buyers and
21 simultaneously working with prospective lenders to satisfy the Note.

22 59. ~~57.~~ The HFF materials stated that the asking price for the \$50 million Note was
23 \$30.6 million.

24 60. ~~58.~~ Defendants knew, or should have known, that advertising the Note at an
25 asking price well below the Note's face value would signal to participants in the Arizona real
26 estate market – including all recipients of the email blast – that Epicenter and Gray were in
27 financial distress.

1 61. ~~59.~~ In the face of that unmistakable signal, no reasonable buyer would enter into
2 a transaction with Epicenter and Gray because of the perceived risk that Epicenter and Gray
3 would default.

4 62. ~~60.~~ Similarly, no buyer would pay a market price for the real property collateral
5 (which was worth several times the face amount of the Note), or refinance the debt (with face
6 amounts of \$50,713,000 and \$2,956,703.66) when the senior note was being advertised on the
7 open market for \$30.6 million.

8 63. ~~61.~~ It was obvious to prospective purchasers that a price of \$30.6 million for the
9 Note and deed of trust could, upon default, translate to a price of \$7.28/square foot for the real
10 estate – 75-85% less than the land was actually worth at that time.

11 64. ~~62.~~ Upon information and belief, Defendants additionally authorized HFF to
12 widely disseminate the Note. Consequently, prospective buyers and lenders knew the interest
13 rate Epicenter and Gray were paying. With knowledge of that rate, prospective buyers no
14 longer wished to deal with Epicenter and Gray as those buyers thought Epicenter and Gray
15 were at imminent risk of default, at which time buyers could purchase the land for far less than
16 its market value. Additionally, lenders who had previously been negotiating low double-digit
17 rates suddenly demanded exponentially more.

18 65. ~~63.~~ Consequently, Defendants' marketing efforts, including the email blast,
19 prevented Epicenter and Gray from entering into a transaction through which they could have
20 refinanced or extinguished the Note.

21 66. ~~64.~~ Prior to HFF's email blast, the Arizona real estate market had begun to show
22 signs of recovery.

23 67. ~~65.~~ The HFF marketing immediately caused the Estates' Property and Epicenter
24 and Gray themselves to be viewed as distressed.

25 68. ~~66.~~ HFF, at Defendants' direction and with their consent, included the maturity
26 date of the Note in its email blast.

69. ~~67.~~ As a result, the market became aware of the Note's December 31, 2015 maturity date. The market was unaware of such information prior to the HFF marketing and its highly public "email blasts." Epicenter's and Gray's ability to protect their interests by selling a portion of the Estates' Property to satisfy or refinance the Ganymede Note was destroyed virtually overnight.

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75. ~~73.~~ Plaintiff incorporates the foregoing allegations as though fully set forth herein.

76. ~~74.~~ Upon information and belief, Ganymede was inadequately capitalized for its business.

77. ~~75.~~ At all times relevant to this litigation, Ganymede failed to maintain corporate formalities.

78. ~~76.~~ At all times relevant to this litigation, Burford continuously demonstrated a complete and utter lack of adherence to the separate legal personalities of itself and Ganymede by making all high-level decisions on Ganymede's behalf in its dealings with Epicenter and Gray.

79. ~~77.~~ Further, upon information and belief, Burford and Ganymede failed to honor Ganymede's corporate form.

80. ~~78.~~ Burford exercised substantially total control over the management and activities of Ganymede during Ganymede's entire existence as a corporate legal entity. Ganymede had no separate mind, will, or existence of its own, but instead its sole purpose was to serve as a business conduit for Burford during its dealings with Epicenter and Gray.

81. ~~79.~~ During the dealings with Epicenter and Gray in which Ganymede was the named party to the agreements, Burford representatives completely disregarded Ganymede's separate legal personality by directly communicating with Epicenter and Gray on Ganymede's behalf, approving Ganymede's transactions through Burford's own board, and referring to Burford as Epicenter's and Gray's creditor despite Ganymede's status as the secured party of record.

82. ~~80.~~ For example, in discussions about the necessity of a "pre-negotiation letter" and the terms therein, Epicenter and Gray negotiated and communicated exclusively with Burford.

83. ~~81.~~ In the discussions addressing the terms of the pre-negotiation letter, Burford informed Epicenter and Gray that "[w]e are not asking you to give up rights you now have (we

1 don't see how you could possibly have a claim against us). We simply want you to
2 acknowledge that the debt is coming due and you don't have claims against us – a standard
3 request for a creditor whose debtor wants to negotiate a forbearance.” The person writing the
4 word “we” worked for Burford and was using it to refer to Burford, not Ganymede.

5 84. ~~82.~~ In discussions addressing Epicenter's and Gray's closing of an outlet mall
6 sale to pay down the Note, Burford mentioned the Burford board's ability to vary the terms of
7 the deal as well as the Burford board's desire to gain extra returns on the deal if the closing
8 were delayed beyond September 2014.

9 85. ~~83.~~ In the discussions addressing Epicenter's and Gray's paydown of the Note,
10 Burford informed Epicenter and Gray that Burford and STB had reached an agreement that
11 permitted Burford, not Ganymede, to accept an offer by a particular date and have Epicenter
12 and Gray roll the STB Note into a new note for the same value with new security.

13 86. ~~84.~~ In the discussions addressing Epicenter and Gray's paydown of the Note,
14 Burford informed Epicenter and Gray that Burford's board had given their final approval and
15 the deal was ready to close.

16 87. ~~85.~~ In later negotiations relating to Ganymede's Note, on which Ganymede was
17 the payee, Burford told Epicenter and Gray that their “ideal source of financing would be an
18 entity with a lower cost of capital, and lower return expectations than Burford.”

19 88. ~~86.~~ Burford intended to utilize Ganymede as nothing more than a shell company,
20 and made these intentions known by approving Ganymede's purported transactions with its
21 own board as well as referring to itself as Epicenter's and Gray's creditor despite Ganymede's
22 status as the secured party of record.

23 89. ~~87.~~ Observance of the separate legal personalities of Burford and Ganymede
24 would sanction fraud and promote injustice against Epicenter and Gray.

25 90. ~~88.~~ Epicenter and Gray are entitled to pierce the corporate veil between Burford
26 and Ganymede, and hold Burford liable for all damages suffered by Epicenter and Gray as a
27 result of its conduct.

21. ~~89.~~ Epicenter and Gray are entitled to a declaration that Ganymede's corporate veil may be disregarded as a mere alter ego of Burford.

92. ~~90.~~—Disregarding Ganymede’s separate legal status is necessary to prevent injustice.

93. ~~91.~~—There is an actual and justiciable controversy between Epicenter and Gray and Defendants concerning whether Burford owes Epicenter and Gray a contractual duty of good faith and fair dealing under the Note.

94. ~~92.~~ Epicenter and Gray are entitled to a declaration that Burford owed Epicenter and Gray a contractual duty of good faith and fair dealing pursuant to the Note.

95. ~~93.~~—This declaratory judgment action arises out of contract, so Epicenter and Gray are entitled to attorneys’ fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

COUNT II

Breach of the Duty of Good Faith and Fair Dealing

96. ~~94.~~ Plaintiff incorporates the foregoing allegations as though fully set forth herein.

97. ~~95.~~ The duty to comply with the implied covenant of good faith and fair dealing is implied in all contracts, including the Note.

98. ~~96.~~ Defendants breached their duty of good faith and fair dealing by taking actions inconsistent with the agreed upon purpose and reasonable expectations of the parties when entering into the Note.

99. ~~97.~~ Under the Note, Epicenter and Gray were to have the benefit of the originally advanced funds, with no obligation to repay until the agreed-upon maturity date.

100. ~~98.~~—Defendants established a routine practice of granting extensions to the maturity date during the parties' prior course of dealing.

101. ~~99.~~ Then, without notice to Epicenter and Gray, Defendants decided that they did not want to wait even for the maturity date to be repaid.

102. ~~100.~~ Defendants decided they would instead prefer to get paid sooner, and therefore took steps to suggest to participants in the Arizona real estate market that the debt was distressed. Defendants were willing to accept less than face value for the Note because Defendants only had a net investment of approximately \$1.43 million in the Note, and consequently would reap an enormous profit even if they sold their interest for less than the \$50 million face amount.

103. ~~101.~~ Defendants knew that doing this would prevent Epicenter and Gray from engaging in an orderly liquidation of a portion of the Estates' Property or the refinancing necessary to satisfy the Note.

104. ~~102.~~ Defendants knew that Epicenter and Gray would instead become likely to lose all of the Estates' Property.

105. ~~103.~~ Defendants breached the duty of good faith and fair dealing by interfering with Epicenter's and Gray's ability and right to repay the Note when due.

106. ~~104.~~ As a direct and proximate cause of Defendants' conduct, Epicenter and Gray were damaged in an amount to be proven at trial, but in excess of \$200 million through the loss of the Estates' Property.

107. ~~105.~~ These damages arose naturally from Defendants' breach of the duty of good faith and fair dealing, were foreseeable, and were reasonably within the contemplation of the parties at the time they entered into the Note.

COUNT III

Tortious Interference with Prospective Business Expectancy

108. ~~106.~~ Plaintiff incorporates the foregoing allegations as though fully set forth herein.

109. ~~107.~~ Epicenter and Gray had a valid business expectancy in selling part of the Estates' Property to pay off or refinance the Note.

110. ~~108.~~ Burford was aware that Epicenter and Gray had a valid business expectancy in selling part of the Estates' Property to satisfy or refinance the Note.

1 111. ~~109.~~ Burford knew that Epicenter and Gray were in on-going negotiations with
2 specific buyers to sell part of the Estates' Property to satisfy or refinance the Note.

3 112. ~~110.~~ While knowing of Epicenter's and Gray's valid business expectancy and
4 on-going negotiations with prospective purchasers, Burford directed HFF to send the email
5 "blast" advertising the Note for sale at a substantial discount.

6 113. ~~111.~~ Through its publicly broadcasted marketing efforts, including the HFF
7 email blast, Burford intentionally and wrongfully interfered with Epicenter's and Gray's
8 ability to market the Estates' Property, and thereby destroyed Epicenter's and Gray's
9 prospective business expectancy.

10 114. ~~112.~~ As a direct and proximate result of Burford's tortious interference with
11 Epicenter's and Gray's valid business expectancy, Epicenter and Gray have suffered damages
12 in an amount to be determined at trial, but in excess of \$200 million.

13 DAMAGES

14 Wherefore, Plaintiff prays for entry of a judgment granting relief as follows:

- 15 A. For orders declaring the parties' rights in Plaintiff's favor as described above;
16 B. For damages in an amount to be proven at trial;
17 C. For pre- and post-judgment interest;
18 D. Costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01; and
19 E. For such other and further relief as the Court determines just and necessary to
20 provide Plaintiffs with a complete remedy under the circumstances.

21 RESPECTFULLY SUBMITTED this ~~15~~14th day of ~~May~~September, 2018.

23 **STINSON LEONARD STREET LLP**

24 /s/ Stefan M. Palys

25 Michael C. Manning

26 Jeffrey J. Goulder

27 Stefan M. Palys

28 James Camoriano

1850 N Central Ave., Ste. 2100

Phoenix, AZ 85004

Attorneys for Plaintiff

1
2
3 ORIGINAL e-filed via AZTurboCourt
this ~~15~~14th day of ~~May~~September, 2018:

4 Clerk of the Court
5 Maricopa County Superior Court
6 201 West Jefferson
Phoenix, Arizona 85003

7 /s/ Cynthia Fischer
8 _____
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Summary report: Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on 9/14/2018 9:11:17 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://EDMS/CORE/139366490/6	
Modified DMS: iw://EDMS/CORE/142353011/1	
Changes:	
<u>Add</u>	121
Delete	115
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	236

EXHIBIT C

EXHIBIT C

SO ORDERED.

Dated: August 23, 2018



Madeleine C. Wanslee
Madeleine C. Wanslee, Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re

Chapter 11

☐ EPICENTER PARTNERS L.L.C.
(EIN 20-1285677),

Case No. 2:16-bk-05493-MCW

☐ GRAY MEYER FANNIN L.L.C.
(EIN 86-1042085),

(Jointly Administered with:

☐ SONORAN DESERT LAND INVESTORS
LLC (EIN 86-1042090),

Case No. 2:16-bk-05494-MCW

☐ EAST OF EPICENTER LLC (EIN 20-4226710),

Case No. 2:16-bk-07659-MCW

☐ GRAY PHOENIX DESERT RIDGE II, LLC
(EIN 46-3117542),

Case No. 2:16-bk-07660-MCW

Case No. 2:16-bk-07661-MCW)

Debtors.

Address: 5515 E. Deer Valley Dr., Phoenix, AZ 85054

**ORDER GRANTING JOINT
MOTION TO APPROVE
SETTLEMENT OF CLAIM ON
EXPEDITED BASIS**

This Filing Applies to:

☒ All Debtors

☐ Specified Debtor(s)

Epicenter Partners L.L.C., Gray Meyer Fannin L.L.C., Sonoran Desert Land Investors LLC; East of Epicenter LLC; and Gray Phoenix Desert Ridge II, LLC, debtors in the above-captioned jointly administered bankruptcy cases ("Debtors"), and R.O.I. Properties, LLC ("Liquidating Trustee") acting through Beth Jo Zeitzer, and Gray Phoenix Desert Ridge I, LLC, ("GPDR I"), by and through their respective counsel, filed a *Joint Motion to Approve Settlement of Claim on Expedited Basis* ("Joint Motion")(DE 1234). The Joint Motion sets forth the terms of a proposed compromise between the Liquidating

1 Trustee of the May Liquidating Trust and July Liquidating Trust, and the Debtors and
2 GPDR I (the “Compromise”). CPF Vaseo Associates, LLC, filed its *Answer and Objection*
3 *to Joint Motion to Approve Settlement of Claim on Expedited Basis; And Request for*
4 *Evidentiary Hearing and Opportunity to Conduct Reasonable Discovery* (DE 1241)(the
5 “CPF Objection”). Emerald Equities, LLC filed its *Opposition to Joint Motion to Approve*
6 *Settlement of Claim on Expedited Basis and Motion to Expedite Hearing on Accelerated*
7 *Notice* (DE 1245) (“Emerald Objection”). Counsel for the Debtors served the Court’s *Order*
8 *Expediting Hearing on Accelerated Notice* (DE 1237) by email on those making formal
9 appearances. The Joint Motion came before the Court for expedited hearing on accelerated
10 basis on August 20, 2018, at 1:30 p.m., and in addition to argument of counsel, evidence
11 was presented at the hearing.

12 On August 22, 2018, after consideration of the Joint Motion, the CPF Objection, the
13 Emerald Objection, the arguments of counsel and evidence presented at the hearing, and for
14 good cause appearing, the Court entered a signed *Minute Entry Order* at DE 1246, setting
15 forth certain findings and conclusions and granting the Joint Motion, and directing the
16 movants to upload a form of order consistent with the Joint Motion and the Minute Entry
17 Order.

18 WHEREFORE, after consideration of the Joint Motion, the CPF Objection, the
19 Emerald Objection, the argument of counsel and evidence presented at the hearing, and for
20 good cause appearing,

21 THE COURT INCORPORATES all findings and conclusions set forth in the Minute
22 Entry Order;

23 **THE COURT FURTHER FINDS** that the Liquidating Trustee entering into the
24 Compromise set forth in the Joint Motion is an appropriate exercise of the Liquidating
25 Trustee’s business judgment, that the Compromise is fair, equitable, and in the best interests
26 of the May and July bankruptcy estates and creditors, that the Compromise is proper under

1 both the Confirmed Plan and under the factors articulated in *In re Woodson*, 839 F.2d 610
2 (9th Cir. 1987), that the Compromise meets the minimum threshold of reasonableness, that
3 time is of the essence in effectuating the Compromise and any right to satisfy claims under
4 Section 8.9 of the Confirmed Plan, and that exigent circumstances warranted the expedited
5 hearing and notice was proper under the circumstances.

6 WHEREFORE,

7 **IT IS ORDERED** as follows:

- 8 1. Granting the Joint Motion and approving the Compromise;
- 9 2. Overruling the CPF Objection;
- 10 3. Overruling the Emerald Objection. The transfer of property under Section 8.9
11 of the Confirmed Plan will be subject to any continuing liens, claims, and interests of
12 Emerald Equities to the same extent they now exist;
- 13 4. The Liquidating Trustee is expressly authorized to accept the sum of
14 \$1,800,000, as set forth in the Joint Motion, as full and complete satisfaction of any and all
15 claims of the May Liquidating Trust and estates against the July Liquidating Trust and
16 estates including scheduled claims of Epicenter Partners and GPDR I;
- 17 5. The Liquidating Trustee is expressly authorized to execute all necessary
18 releases and attendant documents to effectuate the Compromise;
- 19 6. The Liquidating Trustee is expressly authorized, in conjunction with the
20 satisfaction of claims pursuant to Section 8.9 of the Confirmed Plan, to execute all necessary
21 documents, transfers, or conveyances to effectuate Section 8.9 of the Confirmed Plan and to
22 effectuate the transfer of all assets of the July Liquidating Trust and the July estates,
23 including all real and personal property and any claims or causes of action held by the July
24 Liquidating Trust or estates, to the July Debtors, Bruce Gray, or their assigns.
- 25 7. The Liquidating Trustee is expressly authorized to abandon the Burford
26

1 Claims to the Debtors, Bruce Gray, or their assigns;

2 8. The Liquidating Trustee is expressly authorized to transfer any membership
3 interest in GPDR I held by the May Debtors to Bruce Gray or assigns pursuant to the
4 Compromise.

5 9. Waiving, with respect to the Joint Motion and Compromise, the 21-day
6 settlement notice period set forth in Fed R. Bankr. P. 2002(a)(3) and 9019(a);

7 10. Notwithstanding the provisions of Bankruptcy Rule 6004(h) and Bankruptcy
8 Rule 6006(d), this Order shall not be stayed after the entry hereof, but shall be effective and
9 enforceable immediately upon issuance hereof. Time is of the essence in closing
10 transactions referenced in the Joint Motion; and

11 11. This Order shall be immediately binding and effective against all creditors,
12 other parties-in interest in the Bankruptcy Cases, the Liquidating Trusts, and the Bankruptcy
13 Estates.

14 **DATED AND SIGNED ABOVE.**

15
16 On August 23, 2018, counsel for the
17 Liquidating Trustee reviewed and
18 approved this order as directed by
the Minute Entry.

19 MESCH CLARK ROTHSCHILD
20

21 By David J. Hindman, # 24704
22 David J. Hindman

23 Attorneys for Debtor
24
25

26 25G7060

EXHIBIT D

EXHIBIT D

ASSIGNMENT OF CLAIMS

This Assignment of Claims (“**Assignment**”) is executed as of September 10, 2018 (“**Assignment Date**”) by and between: (i) Epicenter Partners L.L.C., an Arizona limited liability company, and Gray Meyer Fannin L.L.C., an Arizona limited liability company (together, the “**Assignor**”); and (ii) Epicenter Loss Recovery LLC, an Arizona limited liability company (“**Assignee**”). Assignor and Assignee are collectively the “**Parties**”.

BACKGROUND

A. In connection with the Settlement Order (“**Order**”) issued in the Chapter 11 Proceedings in Case No. 2:16-bk-05493-MCW in the United States Bankruptcy Court for the District of Arizona, certain claims, as more particularly set forth in the First Amended Complaint filed in the Superior Court of Arizona, Maricopa County, Case No. CV2018-007464 (a copy of which is attached to this Assignment as Exhibit “A”) were abandoned to the Assignor. The abandoned claims that are described in the foregoing sentence are collectively the “**Burford Claims**”.

B. Assignor desires to assign its entire right, title, and interest in and to the Burford Claims (the “**Assigned Interests**”) to Assignee.

AGREEMENTS

For valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows.

1. Assignor assigns the Assigned Interests to Assignee, and Assignee assumes the Assigned Interests from Assignor.

2. All proceeds of any kind arising from or in any way related to the Assigned Interests (“**Proceeds**”) shall be retained solely by the Assignee, and Assignor will make no claim, under any theory, to any Proceeds.

3. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

4. No waiver by either party of any breach of any term or condition of this Assignment shall operate as a waiver of any other breach of such term or condition or of any other term or condition. No failure to enforce such provision shall operate as a waiver of such provision or of any other provision hereof, or constitute or be deemed a waiver or release of any other party for anything arising out of, connected with, or based upon this Assignment.

5. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective transferees, successors, and assigns.

6. This Assignment shall be governed by and construed in accordance with the laws of the State of Arizona. In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party’s costs and expenses of such dispute, including, without limitation, reasonable attorneys’ fees and costs.

7. This Assignment supersedes all prior agreements and constitutes the entire agreement with respect to the Assigned Interests, and it may not be altered or modified without the written consent of the Parties.

Executed as of the Assignment Date

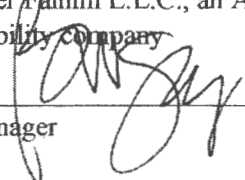
Assignor

Epicenter Partners L.L.C., an Arizona limited liability company

By: GDG Enterprises L.L.C., an Arizona limited liability company, its Manager

By: 
Its: Manager

Gray Meyer Fannin L.L.C., an Arizona limited liability company

By: 
Its: Manager

Assignee

Epicenter Loss Recovery LLC, an Arizona limited liability company

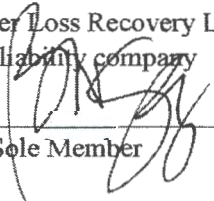
By: 
Its: Sole Member

EXHIBIT E

EXHIBIT E

1 Michael C. Manning (016255)
Jeffrey Goulder (010258)
2 Stefan M. Palys (024752)
James D. Camoriano (034181)
3 **STINSON LEONARD STREET LLP**
1850 North Central Avenue, Suite 2100
4 Phoenix, Arizona 85004-4584
Tel: (602) 279-1600
5 Fax: (602) 240-6925
Email: michael.manning@stinson.com
6 jeffrey.goulder@stinson.com
stefan.palys@stinson.com
7 james.camoriano@stinson.com
Attorneys for Plaintiff

9
10 **IN THE SUPERIOR COURT OF ARIZONA**
11 **MARICOPA COUNTY**

12 R.O.I. PROPERTIES, INC. as
Liquidating Trustee of the estates of
13 EPICENTER PARTNERS, L.L.C. and
GRAY MEYER FANNIN, L.L.C.,

14
15 Plaintiff,

16 vs.

17 BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.,

18 Defendants.

No. CV2018-007464

**DECLARATION IN SUPPORT OF
EXTENSION OF TIME FOR
SERVICE ON DEFENDANTS**

(Assigned to Hon. Timothy Thomason)

19
20 I, James Camoriano, declare as follows:

21 1. I am an attorney at Stinson Leonard Street LLP ("SLS") and am one of the
22 lawyers for Epicenter Partners, L.L.C. and Gray Meyer Fannin, L.L.C. (hereinafter
23 "Epicenter/GMF") in civil case *R.O.I. Properties, Inc. as Liquidating Trustee of the*
24 *estates of Epicenter Partners, L.L.C. and Gray Meyer Fannin, L.L.C. v. Burford Capital*
25 *Ltd. and Ganymede Investments Ltd.*, Superior Court, Maricopa County, No.: CV2018-
26 007464.

27 2. Perkins Coie represented Defendant Ganymede Investments Limited
28 (hereinafter "Ganymede") with respect to the Restated and Amended Forward Purchase

1 Agreement dated January 3, 2011 (hereinafter the "Forward Purchase Agreement"). On
2 October 5, 2016, Counsel for Ganymede contacted SLS regarding SLS's *Motion to*
3 *Unseal Adversary Proceeding No. 2:16-ap-00334-MCW* previously filed on behalf of
4 Epicenter/GMF. Among other things, counsel for Ganymede discussed the resolution of
5 any disputes between Epicenter/Gray and Ganymede arising out of the Forward
6 Purchase Agreement.

7 3. The communication between counsel for Defendants and SLS is based on
8 my personal knowledge, including my review of such correspondence as described
9 herein.

10 4. SLS intends to retain the services of Process Service Network, LLC
11 (hereinafter "Process Service Network") for the purpose of effecting service of process
12 on Burford Capital Ltd. and Ganymede Investments Ltd. (hereinafter "Defendants"),
13 two companies organized under the laws of Guernsey.

14 5. Process Service Network has informed me about its methods and
15 timeframes for service of process under the Hague Convention on the Service Abroad of
16 Judicial and Extra-Judicial Documents in Civil or Commercial Matters (hereinafter the
17 "Hague Service Convention").

18 6. Process Service Network informed me that its timeframe for
19 accomplishing service of process under the procedures of the Hague Service
20 Convention generally takes up to four months. *Accord*
21 <http://www.processnet1.com/guernsey.htm> (Process Service Network's website, so
22 stating).
23

24 7. Process Service Network informed me that its method of service by online
25 publication entails publishing the Complaint, Summons, Order, any notices, and all
26 court-issued documents continuously on the online legal notice publication Global
27 Legal Notices (which may be located at <http://www.globallegalnotices.com/>) for a
28

1 period of three consecutive months.

2 8. Process Service Network representative also confirmed that online
3 publication in the Global Legal Notices publication is a commonly requested method of
4 service by its clients, and that it frequently receives court approval to utilize this
5 method.

6 9. Pursuant to Arizona Rule of Civil Procedure 80(c), I verify under the
7 penalty of perjury that the foregoing is true and correct.
8

9 Executed this 14th day of September, 2018.

10 By: /s/James Camoriano
11 James Camoriano
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EXHIBIT F

EXHIBIT F

Palys, Stefan M.

From: Swindle, Shane (Perkins Coie) <SSwindle@perkinscoie.com>
Sent: Wednesday, September 5, 2018 9:08 PM
To: Palys, Stefan M.
Subject: Re: Complaint re: Burford/Ganymede

Stefan,

I am following up on my email from last week. While we are still not currently authorized to accept service, I'm writing to let you know that we are looking into the question with our clients and may have additional information for you within the next few weeks.

Thank you,

Shane Swindle | Perkins Coie LLP
PARTNER
2901 North Central Avenue Suite 2000
Phoenix, AZ 85012-2788
D. +1.602.351.8384
M. +1.602.791.6325
E. SSwindle@perkinscoie.com

From: "Swindle, Shane (PHX)" <SSwindle@perkinscoie.com>
Date: Wednesday, August 29, 2018 at 11:58 AM
To: "stefan.palys@stinson.com" <stefan.palys@stinson.com>
Cc: Bradley Cosman <BCosman@perkinscoie.com>
Subject: Complaint re: Burford/Ganymede

Stefan,

I am responding to your August 27 email to Brad Cosman regarding the above-referenced matter. Perkins Coie is not authorized to accept service of the complaint. Thank you.

Shane Swindle | Perkins Coie LLP
PARTNER
2901 North Central Avenue Suite 2000
Phoenix, AZ 85012-2788
D. +1.602.351.8384
M. +1.602.791.6325
E. SSwindle@perkinscoie.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Michael C. Manning (#016255)
Jeffrey Goulder (#010258)
Stefan Palys (#024752)
James Camoriano (#034181)
STINSON LEONARD STREET LLP
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jeffrey.goulder@stinson.com
stefan.palys@stinson.com
james.camoriano@stinson.com

Attorneys for Plaintiffs

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

EPICENTER PARTNERS LLC and
GRAY MEYER FANNIN LLC, by and
through ROI PROPERTIES, LLC,
LIQUIDATING TRUSTEE OF THE
MAY LIQUIDATING TRUST,

Plaintiffs,

v.

BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.

Defendants.

No. CV2018-007464

ORDER

Before the Court is Plaintiffs' Ex Parte *Motion for (1) Leave to Amend the Complaint to Substitute Real Party in Interest, (2) an Extension of Time to Accomplish Service of Process on Defendants, and (3) An Order Permitting Service by Alternative Means* (the "Motion"). For the reasons stated in the Motion, and good cause appearing,

IT IS HEREBY ORDERED granting the Motion.

IT IS FURTHER ORDERED that the Second Amended Complaint is deemed filed as of the date on which this order is filed.

IT IS FURTHER ORDERED extending the time for service of process upon

1 Defendants Burford Capital Limited and Ganymede Investments Limited from September 14,
2 2018 through, and including, March 14, 2019.

3 **IT IS FURTHER ORDERED** granting Plaintiff leave to accomplish service of process
4 upon Defendant Ganymede Investments Limited by publication continuously for three
5 consecutive months in the online legal notice publication, Global Legal Notices; and Plaintiff
6 may accomplish service by emailing process to counsel for Defendants Burford Capital
7 Limited and Ganymede Investments Limited, by sending it via email to Shane Swindle
8 (SSSwindle@perkinscoie.com) and Bradley Cosman (BCosman@perkinscoie.com) at Perkins
9 Coie LLP.
10

11 DATED this ____ day of _____, 2018.
12

13

Hon. Timothy Thomason
14 Maricopa County Superior Court Judge
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Michael C. Manning (#016255)
Jeffrey Goulder (#010258)
Stefan Palys (#024752)
James Camoriano (#034181)
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stefan.palys@stinson.com
james.camoriano@stinson.com

Attorneys for Plaintiffs

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

EPICENTER PARTNERS LLC and
GRAY MEYER FANNIN LLC, by and
through ROI PROPERTIES, LLC,
LIQUIDATING TRUSTEE OF THE
MAY LIQUIDATING TRUST,

Plaintiffs,

v.

BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.

Defendants.

No. CV2018-007464

ORDER

Before the Court is Plaintiffs' Ex Parte *Motion for (1) Leave to Amend the Complaint to Substitute Real Party in Interest, (2) an Extension of Time to Accomplish Service of Process on Defendants, and (3) An Order Permitting Service by Alternative Means* (the "Motion"). For the reasons stated in the Motion, and good cause appearing,

IT IS HEREBY ORDERED granting the Motion.

IT IS FURTHER ORDERED that the Second Amended Complaint is deemed filed as of the date on which this order is filed.

IT IS FURTHER ORDERED extending the time for service of process upon

1 Defendants Burford Capital Limited and Ganymede Investments Limited from September 14,
2 2018 through, and including, March 14, 2019.

3 **IT IS FURTHER ORDERED** granting Plaintiff leave to accomplish service of process
4 upon Defendant Ganymede Investments Limited by publication continuously for three
5 consecutive months in the online legal notice publication, Global Legal Notices; and Plaintiff
6 may accomplish service by emailing process to counsel for Defendants Burford Capital
7 Limited and Ganymede Investments Limited, by sending it via email to Shane Swindle
8 (SSSwindle@perkinscoie.com) and Bradley Cosman (BCosman@perkinscoie.com) at Perkins
9 Coie LLP.
10

11 DATED this ____ day of _____, 2018.

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Hon. Timothy Thomason
Maricopa County Superior Court Judge
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eSignature Page 1 of 1

Filing ID: 9711462 Case Number: CV2018-007464
Original Filing ID: 9706585

Granted as Submitted



/S/ Timothy Thomason Date: 9/17/2018
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2018-007464

SIGNATURE DATE: 9/17/2018

E-FILING ID #: 9711462

FILED DATE: 9/18/2018 8:00:00 AM

MICHAEL C MANNING

BURFORD CAPITAL LTD
NO ADDRESS ON RECORD

GANYMEDE INVESTMENTS LTD
NO ADDRESS ON RECORD

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Jeffrey Goulder (#010258)
Stefan Palys (#024752)
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ORIGINAL

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

CV 2018-007464

EPICENTER PARTNERS LLC and
GRAY MEYER FANNIN LLC, by and
through ROI PROPERTIES, LLC,
LIQUIDATING TRUSTEE OF THE
MAY LIQUIDATING TRUST,

Plaintiffs,

vs.

BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.,

Defendants.

No.

SUMMONS

(Commercial Court Eligible)

If you would like legal advice from a lawyer,
contact the Lawyer Referral Service at

602-257-4434

or

www.maricopalawyers.org

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Maricopa County Bar Association

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UNDERSTAND IT, CONTACT A LAWYER FOR HELP.**

THE STATE OF ARIZONA TO THE DEFENDANT:

GANYMEDE INVESTMENTS LTD.

1. A lawsuit has been filed against you. A copy of the lawsuit and other court papers are served on you with this "*Summons*".

2. If you do not want a judgment or order taken against you without your input, you must file an "*Answer*" or a "*Response*" in writing with the court, and pay the filing fee. If you do not file an "*Answer*" or "*Response*" the other party may be given the relief requested in his/her Petition or Complaint. To file your "*Answer*" or "*Response*" take, or send, the "*Answer*" or "*Response*" to the:

- Office of the Clerk of the Superior Court, 201 West Jefferson Street, Phoenix, Arizona 85003-2205 *OR*
- Office of the Clerk of the Superior Court, 18380 North 40th Street, Phoenix, Arizona 85032 *OR*
- Office of the Clerk of Superior Court, 222 East Javelina Avenue, Mesa, Arizona 85210-6201 *OR*
- Office of the Clerk of Superior Court, 14264 West Tierra Buena Lane, Surprise, Arizona, 85374.

Mail a copy of your "*Response*" or "*Answer*" to the other party at the address listed on the top of this Summons.

3. If this "*Summons*" and the other court papers were served on you by a registered process server or the Sheriff, within the State of Arizona, your "*Response*" or "*Answer*" must be filed within TWENTY (20) CALENDAR DAYS from the date you were served, not counting the day you were served. If this "*Summons*" and the other papers were served on you by a registered process server or the Sheriff outside the State of Arizona, your Response must be filed within THIRTY (30) CALENDAR DAYS from the date you were served, not counting the day you were served. Service by a registered process server or the Sheriff is complete when made. Service by Publication is complete thirty (30) days after the date of the first publication.

4. You can get a copy of the court papers filed in this case from the Petitioner at the address listed at the top of the preceding page, from the Clerk of the Superior Court's Customer Service Center at:

- 601 West Jackson, Phoenix, Arizona 85003
- 18380 North 40th Street, Phoenix, Arizona 85032
- 222 East Javelina Avenue, Mesa, Arizona 85210
- 14264 West Tierra Buena Lane, Surprise, Arizona, 85374.

5. Requests for reasonable accommodation for persons with disabilities must be made to the office of the judge or commissioner assigned to the case, at least ten (10) judicial days before your scheduled court date.

6. Requests for an interpreter for persons with limited English proficiency must be made to the office of the judge or commissioner assigned to the case at least ten (10) judicial days in advance of your scheduled court date.

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SIGNED AND SEALED this date MAY 11 2018
Chris DeRose, Clerk of Court

By: J. Fiorro
Deputy Clerk



1 Michael C. Manning (#016255)
2 Jeffrey Goulder (#010258)
3 Stefan Palys (#024752)
4 James Camoriano (#034181)
5 **STINSON LEONARD STREET LLP**
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14 *Attorneys for Plaintiffs*

15 **SUPERIOR COURT OF ARIZONA**

16 **MARICOPA COUNTY**

17 EPICENTER PARTNERS LLC and
18 GRAY MEYER FANNIN LLC, by and
19 through ROI PROPERTIES, LLC,
20 LIQUIDATING TRUSTEE OF THE
21 MAY LIQUIDATING TRUST,

22 Plaintiffs,

23 v.

24 BURFORD CAPITAL LTD., and
25 GANYMEDE INVESTMENTS LTD.

26 Defendants.

ORIGINAL

No. CV2018-007464

SUMMONS

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Contact the Court's Referral Service at
(602) 240-1334
or
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Maricopa County Superior Court*

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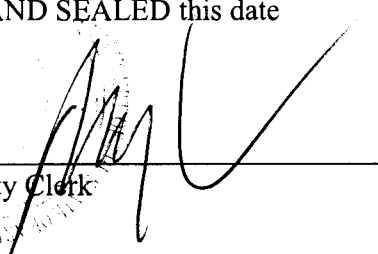
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ten (10) judicial days in advance of your scheduled court date.

24 SIGNED AND SEALED this date

SEP 21 2018

Chris DeRose, Clerk of Court

25 By: 
26 Deputy Clerk
27
28

A. McLoone
Deputy Clerk

1 Michael C. Manning (#016255)
Jeffrey Goulder (#010258)
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Attorneys for Plaintiffs

COPY

MAY 11 2018

CHRIS DEROSE, CLERK
J. FIERRO
DEPUTY CLERK



10 **SUPERIOR COURT OF ARIZONA**

11 **MARICOPA COUNTY**

12
13 EPICENTER PARTNERS LLC and
14 GRAY MEYER FANNIN LLC, by and
15 through ROI PROPERTIES, LLC,
16 LIQUIDATING TRUSTEE OF THE
MAY LIQUIDATING TRUST,

17 Plaintiffs,

18 vs.

19 BURFORD CAPITAL LTD., and
20 GANYMEDE INVESTMENTS LTD.,

21 Defendants.

No.

CV 2018-007464

COMPLAINT

(Commercial Court Eligible)

22 Plaintiffs allege as follows:

23 **PARTIES, JURISDICTION AND VENUE**

24 1. Epicenter Partners LLC ("Epicenter") and Gray Meyer Fannin LLC ("Gray" and
25 collectively with Epicenter, "Plaintiffs") are both Arizona limited liability companies that did
26 business in Maricopa County, Arizona at all times relevant to the events giving rise to this
27 complaint.
28

1 2. Burford Capital Ltd. (“Burford”) is a litigation finance company organized under
2 the laws of Guernsey.

3 3. Ganymede Investments Ltd. (“Ganymede”) is a closed-ended investment
4 company organized under the laws of Guernsey. Upon information and belief, Ganymede has
5 never had any employees, agents, offices, or operations. Instead, it was a single-asset shell
6 company that acted through, was controlled by, and was directed by, Burford.

7 4. Burford and Ganymede (collectively “Defendants”) caused acts or events to
8 occur in Maricopa County, Arizona, out of which Plaintiffs’ claims arise.

9 5. The Court has personal jurisdiction over the parties in this lawsuit.

10 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

11 7. This Court has jurisdiction over the subject matter of this action pursuant to
12 Article VI, § 14 of the Arizona Constitution and A.R.S. § 12-123.

13 8. Plaintiffs are each debtors in United States Bankruptcy Court for the District of
14 Arizona, Case Nos. 2:16-bk-05493-MCW and 2:16-bk-05494-MCW, which were both
15 commenced on May 16, 2016.

16 9. Pursuant to the *Order Confirming Third Amended Joint Plan of Reorganization*
17 *With Stipulated and Non-Adverse Modifications Proposed by CPF Vaseo Associates, LLC*,
18 entered on May 1, 2018, ROI Properties, Inc., as Liquidating Trustee of the May Liquidating
19 Trust, is authorized to pursue the claims in this lawsuit on the Plaintiffs’ behalf.

20 **A. The NPP Litigation.**

21 10. On July 7, 1993, Northeast Phoenix Partners (“NPP”) entered into Commercial
22 Lease No. 03-52415 with the State of Arizona through the State Land Commissioner regarding
23 approximately 5,700 acres of real property in Phoenix, Arizona located north of the Central
24 Arizona Project Canal and south of Pinnacle Peak Road between 32nd Street and 64th Street.

25 11. NPP filed a special action appeal of a City of Phoenix Board of Adjustment
26 decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge Community*
27 *Association, et al. v. City of Phoenix, et al.*, Case No. LC2007-000011 (the “Action”).

1 12. Plaintiffs filed a Counterclaim, First Amended Counterclaim, and Second
2 Amended Counterclaim in the Action against NPP, Desert Ridge Community Association
3 ("DRCA"), and CityNorth, LLC ("CityNorth"). These counterclaims are hereafter collectively
4 referred to as the "Litigation Claim."

5 13. Simpson Thacher & Bartlett, LLP ("STB") represented Plaintiffs in the Action.

6 **B. STB Requires Funding—the 2009 Agreement.**

7 14. From April 30, 2009 through November 20, 2009, STB had been paid
8 \$1,162,885.76 in fees and costs.

9 15. Nevertheless, in December 2009, STB told Plaintiffs that STB would withdraw
10 the next morning unless Plaintiffs obtained litigation financing from Burford to immediately
11 pay STB.

12 16. Plaintiffs attempted to negotiate with Burford for litigation funding.

13 17. During the course of these negotiations, Ganymede did not yet exist.

14 18. Ganymede was not formed until December 22, 2009.

15 19. Ganymede was formed for the sole purpose of acting as the counter-party on the
16 agreements described herein.

17 20. During the course of the negotiations, Burford would not entertain or make any
18 revisions or changes to the agreement forms. The terms were presented on a take-it-or-leave it
19 basis.

20 21. On December 22, 2009, the day Burford ostensibly formed Ganymede, Plaintiffs
21 entered into a Forward Purchase Agreement with it regarding the Litigation Claim ("2009
22 Agreement").

23 22. Through the 2009 Agreement, Defendants agreed to fund \$5 million to be
24 applied to STB's fees in exchange for Plaintiffs granting a contingent interest in any recovery
25 from the Litigation Claim.

26 23. On December 22, 2009, STB amended its engagement letter with Plaintiffs. The
27 amendment was negotiated between Defendants and STB without Plaintiffs' participation, and
28

1 was thereafter presented to Plaintiffs as a negotiated agreement, in which Plaintiffs had no
2 choice.

3 24. The December 22, 2009 letter provided that STB would reimburse itself for all
4 past due fees and disbursements, and would deduct future invoices, from the \$4 million
5 deposit from Defendants; and that, in the event of a judgment in excess of a stated amount,
6 that STB would be entitled to a fee "premium."

7 25. Once STB starting receiving payment from Defendants, STB's billings rose
8 suddenly and dramatically in amount, so that they were quickly triple the amount of the prior
9 billings.

10 26. Defendants made no effort to control litigation costs with STB, though they had
11 the right to do so.

12 27. In May 2010, less than five months after the 2009 Agreement, Plaintiffs reached
13 a settlement of a portion of the Litigation Claim with DRCA for approximately \$6,000,000, of
14 which \$4,000,000 was paid to Defendants. The other \$2 million, on information and belief,
15 was paid to STB for invoices owed.

16 28. Consequently, less than five months after execution of the December 2009
17 Agreement, Defendants were repaid such that its net cash investment was \$1,000,000, for
18 which the 2009 Agreement granted them a 40% interest in the Litigation Claim.

19 **C. The 2010 Agreement.**

20 29. STB's bills continued to rise, unchecked by Defendants.

21 30. STB continued to threaten to resign unless Plaintiffs entered into further
22 agreements with Defendants so Plaintiffs were forced to do so.

23 31. The parties entered into a Restated and Amended Forward Purchase Agreement
24 regarding the Litigation Claim on August 3, 2010 (the "2010 Agreement").¹

25
26
27 ¹ Capitalized terms that are not otherwise defined in this complaint have the meaning ascribed
28 to them in the referenced contracts.

32. Under the 2010 Agreement, Defendants agreed to increase their funding of STB, in exchange for additional returns from the Litigation Claim.

33. On October 19, 2010, Plaintiffs obtained final judgment in the State Court on the Litigation Claim against NPP and CityNorth in the amount of \$110,658,800 plus interest.

34. After this time, STB continued to represent Plaintiffs to collect on this judgment.

35. During post-judgment collections, STB continued to charge Plaintiffs exorbitant fees and threaten to withdraw if they were not quickly paid, as a result of which Plaintiffs were forced to enter into further agreements with Defendants in January, October, and December of 2011. The amendments entitled Defendants to greater returns from the Litigation Claim, and extended the deadlines for payment.

36. By December 2011, Defendants had paid \$6,775,000 in legal fees, but had been repaid all but \$2,775,000 of that amount.

D. Settlement of the Litigation Claim With NPP and Execution of Notes.

37. On May 31, 2012, Plaintiffs negotiated a Settlement Agreement with respect to the Litigation Claim which provided that Plaintiffs would receive Assignment of the Lessee's Rights under the terms of the Arizona State Land Department ("ASLD") Commercial Lease No. 03-52415, the assignment of the Master Development Rights, the assignment of the Declarant's Rights and all intellectual property related thereto (collectively, such property interests shall hereafter be referred to as the "Estates' Property").

38. Upon information and belief, at this time the real estate portion of the Estates' Property alone was worth well in excess of \$100 million.

39. Immediately upon learning of the NPP settlement, Defendants began demanding immediate cash payment from Plaintiffs based on the incorrect position that the agreements required cash payment upon settlement.

40. The settlement, however, transferred the lessee's rights under Commercial Lease No. 03-52415 to Plaintiffs, and so was not a settlement that included a payment of cash.

1 41. Nevertheless, Defendants threatened to declare a default under the agreements
2 with Plaintiffs and sue Plaintiffs if Plaintiffs did not agree to a resolution.

3 42. Defendants and Plaintiffs therefore executed an "Outline of Terms" dated
4 December 12, 2012. In that Outline, Defendants set forth terms under which they proposed to
5 convert the Preferred Return plus 40% "interest" in the Litigation Claim (referred to in the
6 2011 Supplemental Agreement as the Resolution Amount), into a "Liquidated Sum." The
7 Outline of Terms:

8 a. States that, "[a]s of September 30, 2012, the total amount owing by Gray
9 (Debtors) to Ganymede (Ganymede) is agreed to be \$50,713,000 ('Liquidated
10 Sum'). The Liquidated Sum shall be subject to a discount for early payment as
11 set forth on the attached Exhibit 'A' and shall be decreased by the amount of any
12 Net Proceeds and Gray Cash Payments as defined below. The Discount for early
13 payment shall apply only if the payment is made by the applicable date set forth
14 on Exhibit A."

15 b. At the date of the Outline of Terms, Exhibit A would have required payment
16 to Defendants of \$16,419,000.

17 c. The Outline of Terms required the Total Amount to be secured by a first
18 position deed of trust on, and a lien upon, all of the Estates' Property, not just
19 40% of the Estates' Property.

20 d. The Outline required payment of \$37,612,000 by December 31, 2015, or
21 declared that the Total Amount would thereafter bear interest at 35%
22 compounded monthly.

23 43. Plaintiffs executed a Promissory Note dated April 22, 2013, in the amount of
24 \$50,713,000 (the "Note"). The Note states that it is governed by Arizona law.

25 44. Defendants concocted the contrived "debt" structure and the fictitious
26 \$50,713,000 amount owed. In part, such structure was demanded by Defendants for the
27 purpose of minimizing United States taxes. In fact, at the time the Note was executed,
28

1 Defendants had only actually lent \$2,775,000. Reflecting that amount as the debt, however,
2 would have shown that Defendants were subject to taxable gains on the \$47,938,000 profit
3 they stood to make on the Note.

4 45. Defendant did not advance any additional funds to or for the benefit of Plaintiffs
5 at the time of the executing of the Note.

6 46. Plaintiffs executed a deed of trust to secure the Note, which encumbered all of
7 the Estates' Property. That deed of trust states that it is governed by Arizona law, and it was
8 recorded with the Maricopa County Recorder.

9 47. On September 26, 2013, Plaintiffs and Defendants entered into an agreement
10 through which Ganymede received payment of \$1,349,233 in exchange for a release of a
11 portion of property from the deed of trust.

12 48. After that payment, the net capital invested by Defendants in the pursuit of the
13 Litigation Claim by Plaintiffs was, on information and belief, approximately \$1,425,767.

14 **E. Defendants Publicly Market the Note, Harming Plaintiffs.**

15 49. Upon information and belief, by March 2015, and despite their custom and
16 practice of modifying and extending Plaintiffs' payment obligations, Defendants decided that
17 they did not wish to even wait until the maturity date of the Note to get repaid.

18 50. At this time, Plaintiffs were not in default of any obligations under the Note.

19 51. Instead, upon information and belief, Defendants decided that they would rather
20 sell the Note at a discount than wait for payment in full. At the time, Defendants only had an
21 investment of approximately \$1.43 million in a note with a face amount of more than \$50
22 million.

23 52. In or around March 2015, Defendants began an aggressive and highly public
24 advertisement of the Note.

25 53. Defendants hired a broker, HFF, to help them market the Note.

1 54. HFF's marketing materials were publicly circulated with one or more widely
2 disseminated email "blasts" that went to virtually everyone who was even tangentially
3 connected to the Phoenix real estate market.

4 55. Upon information and belief, an agent of Burford acting for the benefit of all
5 Defendants instructed HFF to send the email blast to its vast group of recipients.

6 56. Upon information and belief, Defendants gave this instruction despite knowing
7 Plaintiffs were actively engaged in negotiations with credible buyers and simultaneously
8 working with prospective lenders to satisfy the Note.

9 57. The HFF materials stated that the asking price for the \$50 million Note was
10 \$30.6 million.

11 58. Defendants knew, or should have known, that advertising the Note at an asking
12 price well below the Note's face value would signal to participants in the Arizona real estate
13 market – including all recipients of the email blast – that Plaintiffs were in financial distress.

14 59. In the face of that unmistakable signal, no reasonable buyer would enter into a
15 transaction with Plaintiffs because of the perceived risk that Plaintiffs would default.

16 60. Similarly, no buyer would pay a market price for the real property collateral
17 (which was worth several times the face amount of the Note), or refinance the debt (with face
18 amounts of \$50,713,000 and \$2,956,703.66) when the senior note was being advertised on the
19 open market for \$30.6 million.

20 61. It was obvious to prospective purchasers that a price of \$30.6 million for the
21 Note and deed of trust could, upon default, translate to a price of \$7.28/square foot for the real
22 estate – 75-85% less than the land was actually worth at that time.

23 62. Upon information and belief, Defendants additionally authorized HFF to widely
24 disseminate the Note. Consequently, prospective buyers and lenders knew the interest rate
25 Plaintiffs were paying. With knowledge of that rate, prospective buyers no longer wished to
26 deal with Plaintiffs as those buyers thought Plaintiffs were at imminent risk of default, at
27 which time buyers could purchase the land for far less than its market value. Additionally,
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1 lenders who had previously been negotiating low double-digit rates suddenly demanded
2 exponentially more.

3 63. Consequently, Defendants' marketing efforts, including the email blast,
4 prevented Plaintiffs from entering into a transaction through which they could have refinanced
5 or extinguished the Note.

6 64. Prior to HFF's email blast, the Arizona real estate market had begun to show
7 signs of recovery.

8 65. The HFF marketing immediately caused the Estates' Property and Plaintiffs
9 themselves to be viewed as distressed.

10 66. HFF, at Defendants' direction and with their consent, included the maturity date
11 of the Note in its email blast.

12 67. As a result, the market became aware of Note's December 31, 2015 maturity
13 date. The market was unaware of such information prior to the HFF marketing and its highly
14 public "email blasts." Plaintiffs' ability to protect its interests by selling a portion of the
15 Estates' Property to satisfy or refinance the Ganymede Note was destroyed virtually overnight.

16 68. On January 14, 2016, a Notice of Trustee's Sale and Notification of Disposition
17 of Personal Property was recorded with the Maricopa County Recorder (2016-0026295)
18 regarding approximately 98 acres of vacant property located west of 56th Street and north of
19 the Loop 101 in Phoenix, Arizona (Tax parcel no. 212-32-100G) and the balance of the
20 Estates' Property. Plaintiffs will lose the Estates' Property through that sale.

21 **F. Defendants Sell the Claims to CPF.**

22 69. CPF Vaseo Associates, LLC ("CPF") and Defendants entered into a Sale and
23 Assignment Agreement, dated March 23, 2016 (hereafter, the "Sale Agreement").

24 70. Under that Sale Agreement, CPF contracted to purchase the claims of
25 Defendants, who had by then acquired STB's claim, for a very substantial discount.

26 71. On March 30, 2016, after signing the Sale Agreement, CPF was so pleased with
27 the purchase terms that Mr. Robert Flaxman (on behalf of CPF) contacted a possible investor
28

1 by email stating that, "I have a juicy new deal. Deep distress and big upside. When can we
2 connect?"

3 72. On May 13, 2016, counsel for CPF sent correspondence to counsel for Plaintiffs
4 notifying Plaintiffs that the claimed payoff amount as of May 16, 2016 for the Note was a total
5 of \$54,853,149.17, plus interest accruing at \$52,440.74 per day thereafter. The same
6 correspondence notified Plaintiffs that the claimed payoff amount for the STB Note as of May
7 16, 2016 was \$3,674,319.86, plus interest accruing at \$610.76 per day thereafter.

8 COUNT I

9 Declaratory Relief

10 73. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

11 74. Upon information and belief, Ganymede was inadequately capitalized for its
12 business.

13 75. At all times relevant to this litigation, Ganymede failed to maintain corporate
14 formalities.

15 76. At all times relevant to this litigation, Burford continuously demonstrated a
16 complete and utter lack of adherence to the separate legal personalities of itself and Ganymede
17 by making all high-level decisions on Ganymede's behalf in its dealings with Plaintiffs.

18 77. Further, upon information and belief, Burford and Ganymede failed to honor
19 Ganymede's corporate form.

20 78. Burford exercised substantially total control over the management and activities
21 of Ganymede during Ganymede's entire existence as a corporate legal entity. Ganymede had
22 no separate mind, will, or existence of its own, but instead its sole purpose was to serve as a
23 business conduit for Burford during its dealings with Plaintiffs.

24 79. During the dealings with Plaintiffs in which Ganymede was the named party to the
25 agreements, Burford representatives completely disregarded Ganymede's separate legal
26 personality by directly communicating with Plaintiffs on Ganymede's behalf, approving
27
28

1 Ganymede's transactions through Burford's own board, and referring to Burford as Plaintiffs'
2 creditor despite Ganymede's status as the secured party of record.

3 80. For example, in discussions about the necessity of a "pre-negotiation letter" and
4 the terms therein, Plaintiffs negotiated and communicated exclusively with Burford.

5 81. In the discussions addressing the terms of the pre-negotiation letter, Burford
6 informed Plaintiffs that "[w]e are not asking you to give up rights you now have (we don't see
7 how you could possibly have a claim against us). We simply want you to acknowledge that the
8 debt is coming due and you don't have claims against us – a standard request for a creditor
9 whose debtor wants to negotiate a forbearance." The person writing the word "we" worked for
10 Burford and was using it to refer to Burford, not Ganymede.

11 82. In discussions addressing Plaintiffs' closing of an outlet mall sale to pay down
12 the Note, Burford mentioned the Burford board's ability to vary the terms of the deal as well
13 as the Burford board's desire to gain extra returns on the deal if the closing were delayed
14 beyond September 2014.

15 83. In the discussions addressing Plaintiffs' paydown to the Note, Burford informed
16 Plaintiffs that Burford and STB had reached an agreement that permitted Burford, not
17 Ganymede, to accept an offer by a particular date and have Plaintiffs roll the STB Note into a
18 new note for the same value with new security.

19 84. In the discussions addressing Plaintiffs' paydown of the Note, Burford informed
20 Plaintiffs that Burford's board had given their final approval and the deal was ready to close.

21 85. In later negotiations relating to Ganymede's Note, on which Ganymede was the
22 payee, Burford told Plaintiffs that their "ideal source of financing would be an entity with a
23 lower cost of capital, and lower return expectations than Burford."

24 86. Burford intended to utilize Ganymede as nothing more than a shell company,
25 and made these intentions known by approving Ganymede's purported transactions with its
26 own board as well as referring to itself as Plaintiffs' creditor despite Ganymede's status as the
27 secured party of record.

1 87. Observance of the separate legal personalities of Burford and Ganymede would
2 sanction fraud and promote injustice against Plaintiffs.

3 88. Plaintiffs are entitled to pierce the corporate veil between Burford and
4 Ganymede, and hold Burford liable for all damages suffered by Plaintiffs as a result of its
5 conduct.

6 89. Plaintiffs are entitled to a declaration that Ganymede's corporate veil may be
7 disregarded as a mere alter ego of Burford.

8 90. Disregarding Ganymede's separate legal status is necessary to prevent injustice.

9 91. There is an actual and justiciable controversy between Plaintiffs and Defendants
10 concerning whether Burford owes Plaintiffs a contractual duty of good faith and fair dealing
11 under the Note.

12 92. Plaintiffs are entitled to a declaration that Burford owed Plaintiffs a contractual
13 duty of good faith and fair dealing pursuant to the Note.

14 93. This declaratory judgment action arises out of contract, so Plaintiffs are entitled
15 to attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

16 COUNT II

17 Breach of the Duty of Good Faith and Fair Dealing

18 94. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

19 95. The duty to comply with the implied covenant of good faith and fair dealing is
20 implied in all contracts, including the Note.

21 96. Defendants breached their duty of good faith and fair dealing by taking actions
22 inconsistent with the agreed upon purpose and reasonable expectations of the parties when
23 entering the Note.

24 97. Under the Note, Plaintiffs were to have the benefit of the originally advanced
25 funds, with no obligation to repay until the agreed-upon maturity date.

26 98. Defendants established a routine practice of granting extensions to the maturity
27 date during the parties' prior course of dealing.

99. Then, without notice to Plaintiffs, Defendants decided that they did not want to wait even for the maturity date to be repaid.

100. Defendants decided they would instead prefer to get paid sooner, and therefore took steps to suggest to participants in the Arizona real estate market that the debt was distressed. Defendants were willing to accept less than face value for the Note because Defendants only had a net investment of approximately \$1.43 million in the Note, consequently would reap an enormous profit even if they sold their interest for less than the \$50 million face amount.

101. Defendants knew that doing this would prevent Plaintiffs from engaging in an orderly liquidation of a portion of the Estates' Property or the refinancing necessary to satisfy the Note.

102. Defendants knew that Plaintiffs would instead become likely to lose all of the Estates' Property.

103. Defendants breached the duty of good faith and fair dealing by interfering with Plaintiffs' ability and right to repay the Note when due.

104. As a direct and proximate cause of Defendants' conduct, Plaintiffs were damaged in an amount to be proven at trial, but in excess of \$200 million through the loss of the Estates' Property.

105. These damages arose naturally from Defendants' breach of the duty of good faith and fair dealing, were foreseeable, and were reasonably within the contemplation of the parties at the time they entered into the Note.

COUNT III

Tortious Interference with Prospective Business Expectancy

106. Plaintiffs incorporate the foregoing allegations as though fully set forth herein.

107. Plaintiffs had a valid business expectancy in selling part of the Estates' Property to pay off or refinance the Note.

1 108. Burford was aware that Plaintiffs had a valid business expectancy in selling part
2 of the Estates' Property to satisfy or refinance the Note.

3 109. Burford knew that Plaintiffs were in on-going negotiations with specific buyers
4 to sell part of the Estates' Property to satisfy or refinance the Note.

5 110. While knowing of Plaintiffs' valid business expectancy and on-going
6 negotiations with prospective purchasers, Burford directed HFF to send the email "blast"
7 advertising the Note for sale at a substantial discount.

8 111. Through its publicly broadcasted marketing efforts, including the HFF email
9 blast, Burford intentionally and wrongfully interfered with Plaintiffs' ability to market the
10 Estates' Property, and thereby destroyed Plaintiffs' prospective business expectancy.

11 112. As a direct and proximate result of Burford's tortious interference with
12 Plaintiffs' valid business expectancy, Plaintiffs have suffered damages in an amount to be
13 determined at trial, but in excess of \$200 million.

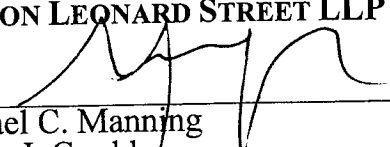
14 **DAMAGES**

15 Wherefore, Plaintiffs pray for entry of a judgment granting relief as follows:

- 16 A. For orders declaring the parties' rights in Plaintiffs' favor as described above;
17 B. For damages in an amount to be proven at trial;
18 C. For pre- and post-judgment interest;
19 D. Costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01;
20 E. For such other and further relief as the Court determines just and necessary to
21 provide Plaintiffs with a complete remedy under the circumstances.

22 RESPECTFULLY SUBMITTED this 11th day of May, 2018.

23 **STINSON LEONARD STREET LLP**

24 
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

R.O.I. PROPERTIES, INC. as
Liquidating Trustee of the estates of
EPICENTER PARTNERS, L.L.C. and
GRAY MEYER FANNIN, L.L.C.,

Plaintiff,

vs.

BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.,

Defendants.

No.: CV2018-007464

FIRST AMENDED COMPLAINT

(Commercial Court Eligible)

Plaintiff alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Epicenter Partners LLC (“Epicenter”) and Gray Meyer Fannin LLC (“Gray”) are both Arizona limited liability companies that did business in Maricopa County, Arizona at all times relevant to the events giving rise to this complaint.

2. Burford Capital Ltd. (“Burford”) is a litigation finance company organized under the laws of Guernsey.

1 3. Ganymede Investments Ltd. (“Ganymede”) is a closed-ended investment
2 company organized under the laws of Guernsey. Upon information and belief, Ganymede has
3 never had any employees, agents, offices, or operations. Instead, it was a single-asset shell
4 company that acted through, was controlled by, and was directed by, Burford.

5 4. Burford and Ganymede (collectively “Defendants”) caused acts or events to
6 occur in Maricopa County, Arizona, out of which Plaintiffs’ claims arise.

7 5. The Court has personal jurisdiction over the parties in this lawsuit.

8 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

9 7. This Court has jurisdiction over the subject matter of this action pursuant to
10 Article VI, § 14 of the Arizona Constitution and A.R.S. § 12-123.

11 8. Epicenter and Gray each commenced a bankruptcy case in the United States
12 Bankruptcy Court for the District of Arizona, Case Nos. 2:16-bk-05493-MCW and 2:16-bk-
13 05494-MCW, on May 16, 2016.

14 9. Pursuant to the “Order Confirming Third Amended Joint Plan of Reorganization
15 with Stipulated and Non-Adverse Modifications Proposed by CPF Vaseo Associates, LLC,”
16 ROI Properties, Inc., as Liquidating Trustee (“Plaintiff”), is authorized to pursue the claims
17 listed below on behalf of Epicenter and Gray.

18 **A. The NPP Litigation.**

19 10. On July 7, 1993, Northeast Phoenix Partners (“NPP”) entered into Commercial
20 Lease No. 03-52415 with the State of Arizona through the State Land Commissioner regarding
21 approximately 5,700 acres of real property in Phoenix, Arizona located north of the Central
22 Arizona Project Canal and south of Pinnacle Peak Road between 32nd Street and 64th Street.

23 11. NPP filed a special action appeal of a City of Phoenix Board of Adjustment
24 decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge Community*
25 *Association, et al. v. City of Phoenix, et al.*, Case No. LC2007-000011 (the “Action”).

26 12. Epicenter and Gray filed a Counterclaim, First Amended Counterclaim, and
27 Second Amended Counterclaim in the Action against NPP, Desert Ridge Community
28

1 Association (“DRCA”), and CityNorth, LLC (“CityNorth”). These counterclaims are
2 hereafter collectively referred to as the “Litigation Claim.”

3 13. Simpson Thacher & Bartlett, LLP (“STB”) represented Epicenter and Gray in
4 the Action.

5 **B. STB Requires Funding—the 2009 Agreement.**

6 14. From April 30, 2009 through November 20, 2009, STB had been paid
7 \$1,162,885.76 in fees and costs.

8 15. Nevertheless, in December 2009, STB told Epicenter and Gray that STB would
9 withdraw the next morning unless Epicenter and Gray obtained litigation financing from
10 Burford to immediately pay STB.

11 16. Epicenter and Gray attempted to negotiate with Burford for litigation funding.

12 17. During the course of these negotiations, Ganymede did not yet exist.

13 18. Ganymede was not formed until December 22, 2009.

14 19. Ganymede was formed for the sole purpose of acting as the counter-party on the
15 agreements described herein.

16 20. During the course of the negotiations, Burford would not entertain or make any
17 revisions or changes to the agreement forms. The terms were presented on a take-it-or-leave it
18 basis.

19 21. On December 22, 2009, the day Burford ostensibly formed Ganymede,
20 Epicenter and Gray entered into a Forward Purchase Agreement with it regarding the
21 Litigation Claim (“2009 Agreement”).

22 22. Through the 2009 Agreement, Defendants agreed to provide \$5 million in
23 funding to be applied to STB’s fees in exchange for Epicenter and Gray granting a contingent
24 interest in any recovery from the Litigation Claim.

25 23. On December 22, 2009, STB amended its engagement letter with Epicenter and
26 Gray. The amendment was negotiated between Defendants and STB without Epicenter’s and
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Gray's participation, and was thereafter presented to Epicenter and Gray as a negotiated agreement, in which Epicenter and Gray had no choice.

24. The December 22, 2009 letter provided that STB would reimburse itself for all past due fees and disbursements, and would deduct future invoices, from the \$4 million deposit from Defendants; and that, in the event of a judgment in excess of a stated amount, STB would be entitled to a fee "premium."

25. Once STB starting receiving payment from Defendants, STB's billings rose suddenly and dramatically in amount, so that they were quickly triple the amount of the prior billings.

26. Defendants made no effort to control litigation costs with STB, though they had the right to do so.

27. In May 2010, less than five months after the 2009 Agreement, Epicenter and Gray reached a settlement of a portion of the Litigation Claim with DRCA for approximately \$6,000,000, of which \$4,000,000 was paid to Defendants. The other \$2 million, on information and belief, was paid to STB for invoices owed.

28. Consequently, less than five months after execution of the December 2009 Agreement, Defendants were repaid such that their net cash investment was \$1,000,000, for which the 2009 Agreement granted them a 40% interest in the Litigation Claim.

C. The 2010 Agreement.

29. STB's bills continued to rise, unchecked by Defendants.

30. STB continued to threaten to resign unless Epicenter and Gray entered into further agreements with Defendants so Epicenter and Gray were forced to do so.

31. The parties entered into a Restated and Amended Forward Purchase Agreement regarding the Litigation Claim on August 3, 2010 (the "2010 Agreement").¹

¹ Capitalized terms that are not otherwise defined in this complaint have the meaning ascribed to them in the referenced contracts.

1 32. Under the 2010 Agreement, Defendants agreed to increase their funding of STB,
2 in exchange for additional returns from the Litigation Claim.

3 33. On October 19, 2010, Epicenter and Gray obtained final judgment in the State
4 Court on the Litigation Claim against NPP and CityNorth in the amount of \$110,658,800 plus
5 interest.

6 34. After this time, STB continued to represent Epicenter and Gray to collect on this
7 judgment.

8 35. During post-judgment collections, STB continued to charge Epicenter and Gray
9 exorbitant fees and threaten to withdraw if they were not quickly paid, as a result of which
10 Epicenter and Gray were forced to enter into further agreements with Defendants in January,
11 October, and December of 2011. The amendments entitled Defendants to greater returns from
12 the Litigation Claim, and extended the deadlines for payment.

13 36. By December 2011, Defendants had paid \$6,775,000 in legal fees, but had been
14 repaid all but \$2,775,000 of that amount.

15 **D. Settlement of the Litigation Claim With NPP and Execution of Notes.**

16 37. On May 31, 2012, Epicenter and Gray negotiated a Settlement Agreement with
17 respect to the Litigation Claim which provided that Epicenter and Gray would receive an
18 Assignment of the Lessee's Rights under the terms of the Arizona State Land Department
19 ("ASLD") Commercial Lease No. 03-52415, the assignment of the Master Development
20 Rights, the assignment of the Declarant's Rights and all intellectual property related thereto
21 (collectively, such property interests shall hereafter be referred to as the "Estates' Property").

22 38. Upon information and belief, at this time the real estate portion of the Estates'
23 Property alone was worth well in excess of \$100 million.

24 39. Immediately upon learning of the NPP settlement, Defendants began demanding
25 immediate cash payment from Epicenter and Gray based on the incorrect position that the
26 agreements required cash payment upon settlement.

1 40. The settlement, however, transferred the lessee's rights under Commercial Lease
2 No. 03-52415 to Epicenter and Gray, and so was not a settlement that included a payment of
3 cash.

4 41. Nevertheless, Defendants threatened to declare a default under the agreements
5 with Epicenter and Gray and sue Epicenter and Gray if Epicenter and Gray did not agree to a
6 resolution.

7 42. Defendants and Epicenter and Gray therefore executed an "Outline of Terms"
8 dated December 12, 2012. In that Outline, Defendants set forth terms under which they
9 proposed to convert the Preferred Return plus 40% "interest" in the Litigation Claim (referred
10 to in the 2011 Supplemental Agreement as the Resolution Amount), into a "Liquidated Sum."
11 Following is the critical information contained in or related to the Outline of Terms:

12 a. The Outline of Terms states that, "[a]s of September 30, 2012, the total
13 amount owing by Gray (Debtors) to Ganymede (Ganymede) is agreed to be
14 \$50,713,000 ('Liquidated Sum'). The Liquidated Sum shall be subject to a
15 discount for early payment as set forth on the attached Exhibit 'A' and shall be
16 decreased by the amount of any Net Proceeds and Gray Cash Payments as
17 defined below. The Discount for early payment shall apply only if the payment
18 is made by the applicable date set forth on Exhibit A."

19 b. At the date of the Outline of Terms, Exhibit A to the Outline of Terms would
20 have required payment to Defendants of \$16,419,000.

21 c. The Outline of Terms required the Total Amount to be secured by a first
22 position deed of trust on, and a lien upon, all of the Estates' Property, not just
23 40% of the Estates' Property.

24 d. The Outline of Terms required payment of \$37,612,000 by December 31,
25 2015, or declared that the Total Amount would thereafter bear interest at 35%
26 compounded monthly.

1 43. Epicenter and Gray executed a Promissory Note dated April 22, 2013, in the
2 amount of \$50,713,000 (the “Note”). The Note states that it is governed by Arizona law.

3 44. Defendants concocted the contrived “debt” structure and the fictitious
4 \$50,713,000 amount owed. In part, such structure was demanded by Defendants for the
5 purpose of minimizing United States taxes. In fact, at the time the Note was executed, the net
6 amount loaned by Defendants was only \$2,775,000. Reflecting that amount as the debt,
7 however, would have shown that Defendants were subject to taxable gains on the \$47,938,000
8 profit they stood to make on the Note.

9 45. Defendants did not advance any additional funds to or for the benefit of
10 Epicenter and Gray at the time the Note was executed.

11 46. Epicenter and Gray executed a deed of trust to secure the Note, which
12 encumbered all of the Estates’ Property. That deed of trust states that it is governed by
13 Arizona law, and it was recorded with the Maricopa County Recorder.

14 47. On September 26, 2013, Epicenter and Gray and Defendants entered into an
15 agreement through which Ganymede received payment of \$1,349,233 in exchange for a
16 release of a portion of property from the deed of trust.

17 48. After that payment, the net capital invested by Defendants in the pursuit of the
18 Litigation Claim by Epicenter and Gray was, on information and belief, approximately
19 \$1,425,767.

20 **E. Defendants Publicly Market the Note, Harming Epicenter and Gray.**

21 49. Upon information and belief, by March 2015, and despite their custom and
22 practice of modifying and extending Epicenter’s and Gray’s payment obligations, Defendants
23 decided that they did not wish to even wait until the maturity date of the Note to get repaid.

24 50. At this time, Epicenter and Gray were not in default of any obligations under the
25 Note.

26 51. Instead, upon information and belief, Defendants decided that they would rather
27 sell the Note at a discount than wait for payment in full. At the time, Defendants only had an
28

1 investment of approximately \$1.43 million in a note with a face amount of more than \$50
2 million.

3 52. In or around March 2015, Defendants began an aggressive and highly public
4 advertisement of the Note.

5 53. Defendants hired a broker, HFF, to help them market the Note.

6 54. HFF's marketing materials were publicly circulated with one or more widely
7 disseminated email "blasts" that went to virtually everyone who was even tangentially
8 connected to the Phoenix real estate market.

9 55. Upon information and belief, an agent of Burford acting for the benefit of all
10 Defendants instructed HFF to send the email blast to its vast group of recipients.

11 56. Upon information and belief, Defendants gave this instruction despite knowing
12 Epicenter and Gray were actively engaged in negotiations with credible buyers and
13 simultaneously working with prospective lenders to satisfy the Note.

14 57. The HFF materials stated that the asking price for the \$50 million Note was
15 \$30.6 million.

16 58. Defendants knew, or should have known, that advertising the Note at an asking
17 price well below the Note's face value would signal to participants in the Arizona real estate
18 market – including all recipients of the email blast – that Epicenter and Gray were in financial
19 distress.

20 59. In the face of that unmistakable signal, no reasonable buyer would enter into a
21 transaction with Epicenter and Gray because of the perceived risk that Epicenter and Gray
22 would default.

23 60. Similarly, no buyer would pay a market price for the real property collateral
24 (which was worth several times the face amount of the Note), or refinance the debt (with face
25 amounts of \$50,713,000 and \$2,956,703.66) when the senior note was being advertised on the
26 open market for \$30.6 million.

1 61. It was obvious to prospective purchasers that a price of \$30.6 million for the
2 Note and deed of trust could, upon default, translate to a price of \$7.28/square foot for the real
3 estate – 75-85% less than the land was actually worth at that time.

4 62. Upon information and belief, Defendants additionally authorized HFF to widely
5 disseminate the Note. Consequently, prospective buyers and lenders knew the interest rate
6 Epicenter and Gray were paying. With knowledge of that rate, prospective buyers no longer
7 wished to deal with Epicenter and Gray as those buyers thought Epicenter and Gray were at
8 imminent risk of default, at which time buyers could purchase the land for far less than its
9 market value. Additionally, lenders who had previously been negotiating low double-digit
10 rates suddenly demanded exponentially more.

11 63. Consequently, Defendants' marketing efforts, including the email blast,
12 prevented Epicenter and Gray from entering into a transaction through which they could have
13 refinanced or extinguished the Note.

14 64. Prior to HFF's email blast, the Arizona real estate market had begun to show
15 signs of recovery.

16 65. The HFF marketing immediately caused the Estates' Property and Epicenter and
17 Gray themselves to be viewed as distressed.

18 66. HFF, at Defendants' direction and with their consent, included the maturity date
19 of the Note in its email blast.

20 67. As a result, the market became aware of the Note's December 31, 2015 maturity
21 date. The market was unaware of such information prior to the HFF marketing and its highly
22 public "email blasts." Epicenter's and Gray's ability to protect their interests by selling a
23 portion of the Estates' Property to satisfy or refinance the Ganymede Note was destroyed
24 virtually overnight.

25 68. On January 14, 2016, a Notice of Trustee's Sale and Notification of Disposition
26 of Personal Property was recorded with the Maricopa County Recorder (2016-0026295)
27 regarding approximately 98 acres of vacant property located west of 56th Street and north of
28

1 the Loop 101 in Phoenix, Arizona (Tax parcel no. 212-32-100G) and the balance of the
2 Estates' Property. Epicenter and Gray would have lost the Estates' Property through that sale.

3 **F. Defendants Sell the Claims to CPF.**

4 69. CPF Vaseo Associates, LLC ("CPF") and Defendants entered into a Sale and
5 Assignment Agreement, dated March 23, 2016 (hereafter, the "Sale Agreement").

6 70. Under that Sale Agreement, CPF contracted to purchase the claims of
7 Defendants, who had by then acquired STB's claim, for a very substantial discount.

8 71. On March 30, 2016, after signing the Sale Agreement, CPF was so pleased with
9 the purchase terms that Mr. Robert Flaxman (on behalf of CPF) contacted a possible investor
10 by email stating that, "I have a juicy new deal. Deep distress and big upside. When can we
11 connect?"

12 72. On May 13, 2016, counsel for CPF sent correspondence to counsel for Epicenter
13 and Gray notifying Epicenter and Gray that the claimed payoff amount as of May 16, 2016 for
14 the Note was a total of \$54,853,149.17, plus interest accruing at \$52,440.74 per day thereafter.
15 The same correspondence notified Epicenter and Gray that the claimed payoff amount for the
16 STB Note as of May 16, 2016 was \$3,674,319.86, plus interest accruing at \$610.76 per day
17 thereafter.

18 **COUNT I**

19 **Declaratory Relief**

20 73. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

21 74. Upon information and belief, Ganymede was inadequately capitalized for its
22 business.

23 75. At all times relevant to this litigation, Ganymede failed to maintain corporate
24 formalities.

25 76. At all times relevant to this litigation, Burford continuously demonstrated a
26 complete and utter lack of adherence to the separate legal personalities of itself and Ganymede
27
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1 by making all high-level decisions on Ganymede's behalf in its dealings with Epicenter and
2 Gray.

3 77. Further, upon information and belief, Burford and Ganymede failed to honor
4 Ganymede's corporate form.

5 78. Burford exercised substantially total control over the management and activities
6 of Ganymede during Ganymede's entire existence as a corporate legal entity. Ganymede had
7 no separate mind, will, or existence of its own, but instead its sole purpose was to serve as a
8 business conduit for Burford during its dealings with Epicenter and Gray.

9 79. During the dealings with Epicenter and Gray in which Ganymede was the named
10 party to the agreements, Burford representatives completely disregarded Ganymede's separate
11 legal personality by directly communicating with Epicenter and Gray on Ganymede's behalf,
12 approving Ganymede's transactions through Burford's own board, and referring to Burford as
13 Epicenter's and Gray's creditor despite Ganymede's status as the secured party of record.

14 80. For example, in discussions about the necessity of a "pre-negotiation letter" and
15 the terms therein, Epicenter and Gray negotiated and communicated exclusively with Burford.

16 81. In the discussions addressing the terms of the pre-negotiation letter, Burford
17 informed Epicenter and Gray that "[w]e are not asking you to give up rights you now have (we
18 don't see how you could possibly have a claim against us). We simply want you to
19 acknowledge that the debt is coming due and you don't have claims against us – a standard
20 request for a creditor whose debtor wants to negotiate a forbearance." The person writing the
21 word "we" worked for Burford and was using it to refer to Burford, not Ganymede.

22 82. In discussions addressing Epicenter's and Gray's closing of an outlet mall sale to
23 pay down the Note, Burford mentioned the Burford board's ability to vary the terms of the
24 deal as well as the Burford board's desire to gain extra returns on the deal if the closing were
25 delayed beyond September 2014.

26 83. In the discussions addressing Epicenter's and Gray's paydown of the Note,
27 Burford informed Epicenter and Gray that Burford and STB had reached an agreement that
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1 permitted Burford, not Ganymede, to accept an offer by a particular date and have Epicenter
2 and Gray roll the STB Note into a new note for the same value with new security.

3 84. In the discussions addressing Epicenter and Gray's paydown of the Note,
4 Burford informed Epicenter and Gray that Burford's board had given their final approval and
5 the deal was ready to close.

6 85. In later negotiations relating to Ganymede's Note, on which Ganymede was the
7 payee, Burford told Epicenter and Gray that their "ideal source of financing would be an entity
8 with a lower cost of capital, and lower return expectations than Burford."

9 86. Burford intended to utilize Ganymede as nothing more than a shell company,
10 and made these intentions known by approving Ganymede's purported transactions with its
11 own board as well as referring to itself as Epicenter's and Gray's creditor despite Ganymede's
12 status as the secured party of record.

13 87. Observance of the separate legal personalities of Burford and Ganymede would
14 sanction fraud and promote injustice against Epicenter and Gray.

15 88. Epicenter and Gray are entitled to pierce the corporate veil between Burford and
16 Ganymede, and hold Burford liable for all damages suffered by Epicenter and Gray as a result
17 of its conduct.

18 89. Epicenter and Gray are entitled to a declaration that Ganymede's corporate veil
19 may be disregarded as a mere alter ego of Burford.

20 90. Disregarding Ganymede's separate legal status is necessary to prevent injustice.

21 91. There is an actual and justiciable controversy between Epicenter and Gray and
22 Defendants concerning whether Burford owes Epicenter and Gray a contractual duty of good
23 faith and fair dealing under the Note.

24 92. Epicenter and Gray are entitled to a declaration that Burford owed Epicenter and
25 Gray a contractual duty of good faith and fair dealing pursuant to the Note.

26 93. This declaratory judgment action arises out of contract, so Epicenter and Gray
27 are entitled to attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.
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COUNT II

Breach of the Duty of Good Faith and Fair Dealing

94. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

95. The duty to comply with the implied covenant of good faith and fair dealing is implied in all contracts, including the Note.

96. Defendants breached their duty of good faith and fair dealing by taking actions inconsistent with the agreed upon purpose and reasonable expectations of the parties when entering into the Note.

97. Under the Note, Epicenter and Gray were to have the benefit of the originally advanced funds, with no obligation to repay until the agreed-upon maturity date.

98. Defendants established a routine practice of granting extensions to the maturity date during the parties' prior course of dealing.

99. Then, without notice to Epicenter and Gray, Defendants decided that they did not want to wait even for the maturity date to be repaid.

100. Defendants decided they would instead prefer to get paid sooner, and therefore took steps to suggest to participants in the Arizona real estate market that the debt was distressed. Defendants were willing to accept less than face value for the Note because Defendants only had a net investment of approximately \$1.43 million in the Note, and consequently would reap an enormous profit even if they sold their interest for less than the \$50 million face amount.

101. Defendants knew that doing this would prevent Epicenter and Gray from engaging in an orderly liquidation of a portion of the Estates' Property or the refinancing necessary to satisfy the Note.

102. Defendants knew that Epicenter and Gray would instead become likely to lose all of the Estates' Property.

103. Defendants breached the duty of good faith and fair dealing by interfering with Epicenter's and Gray's ability and right to repay the Note when due.

104. As a direct and proximate cause of Defendants' conduct, Epicenter and Gray were damaged in an amount to be proven at trial, but in excess of \$200 million through the loss of the Estates' Property.

105. These damages arose naturally from Defendants' breach of the duty of good faith and fair dealing, were foreseeable, and were reasonably within the contemplation of the parties at the time they entered into the Note.

COUNT III

Tortious Interference with Prospective Business Expectancy

106. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

107. Epicenter and Gray had a valid business expectancy in selling part of the Estates' Property to pay off or refinance the Note.

108. Burford was aware that Epicenter and Gray had a valid business expectancy in selling part of the Estates' Property to satisfy or refinance the Note.

109. Burford knew that Epicenter and Gray were in on-going negotiations with specific buyers to sell part of the Estates' Property to satisfy or refinance the Note.

110. While knowing of Epicenter’s and Gray’s valid business expectancy and ongoing negotiations with prospective purchasers, Burford directed HFF to send the email “blast” advertising the Note for sale at a substantial discount.

111. Through its publicly broadcasted marketing efforts, including the HFF email blast, Burford intentionally and wrongfully interfered with Epicenter's and Gray's ability to market the Estates' Property, and thereby destroyed Epicenter's and Gray's prospective business expectancy.

112. As a direct and proximate result of Burford's tortious interference with Epicenter's and Gray's valid business expectancy, Epicenter and Gray have suffered damages in an amount to be determined at trial, but in excess of \$200 million.

DAMAGES

Wherefore, Plaintiff prays for entry of a judgment granting relief as follows:

- A. For orders declaring the parties' rights in Plaintiff's favor as described above;
- B. For damages in an amount to be proven at trial;
- C. For pre- and post-judgment interest;
- D. Costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01; and
- E. For such other and further relief as the Court determines just and necessary to provide Plaintiffs with a complete remedy under the circumstances.

RESPECTFULLY SUBMITTED this 15th day of May, 2018.

STINSON LEONARD STREET LLP

/s/ *Stefan M. Palys*

Michael C. Manning

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Attorneys for Plaintiff

ORIGINAL e-filed via AZTurboCourt
this 15th day of May, 2018:

Clerk of the Court
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003

/s/ Cynthia Fischer

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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

Epicenter Loss Recovery, L.L.C.,
Plaintiff,

vs.

BURFORD CAPITAL LTD., and
GANYMEDE INVESTMENTS LTD.,
Defendants.

No.: CV2018-007464

**SECOND AMENDED
COMPLAINT**

(Commercial Court Eligible)

(Assigned to Hon. Timothy
Thomason)

Plaintiff Epicenter Loss Recovery, L.L.C. (hereinafter "Plaintiff") alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Epicenter Partners LLC ("Epicenter") and Gray Meyer Fannin LLC ("Gray") are both Arizona limited liability companies that did business in Maricopa County, Arizona at all times relevant to the events giving rise to this complaint.

2. Burford Capital Ltd. ("Burford") is a litigation finance company organized under the laws of Guernsey.

1 3. Ganymede Investments Ltd. (“Ganymede”) is a closed-ended investment
2 company organized under the laws of Guernsey. Upon information and belief, Ganymede has
3 never had any employees, agents, offices, or operations. Instead, it was a single-asset shell
4 company that acted through, was controlled by, and was directed by, Burford.

5 4. Burford and Ganymede (collectively “Defendants”) caused acts or events to
6 occur in Maricopa County, Arizona, out of which Plaintiffs’ claims arise.

7 5. The Court has personal jurisdiction over the parties in this lawsuit.

8 6. Venue is proper in this Court pursuant to A.R.S. § 12-401.

9 7. This Court has jurisdiction over the subject matter of this action pursuant to
10 Article VI, § 14 of the Arizona Constitution and A.R.S. § 12-123.

11 8. Epicenter and Gray each commenced a bankruptcy case in the United States
12 Bankruptcy Court for the District of Arizona, Case Nos. 2:16-bk-05493-MCW and 2:16-bk-
13 05494-MCW, on May 16, 2016.

14 9. Pursuant to the “Order Confirming Third Amended Joint Plan of Reorganization
15 with Stipulated and Non-Adverse Modifications Proposed by CPF Vaseo Associates, LLC,”
16 ROI Properties, Inc., as Liquidating Trustee, became authorized to pursue the claims listed
17 below on behalf of Epicenter and Gray on May 1, 2018.

18 10. On August 22, 2018, the United States Bankruptcy Court for the District of
19 Arizona approved a settlement of disputed claims. Under the terms of the settlement, ROI
20 Properties, Inc. became expressly authorized to abandon the claims listed below to Epicenter,
21 Gray, or their assigns. ROI Properties, Inc. abandoned the claims listed below to Epicenter and
22 Gray pursuant to this settlement.

23 11. On August 31, 2018, Epicenter and Gray executed the assignment of the claims
24 listed below to Plaintiff, which now owns these claims.

25 **A. The NPP Litigation.**

26 12. On July 7, 1993, Northeast Phoenix Partners (“NPP”) entered into Commercial
27 Lease No. 03-52415 with the State of Arizona through the State Land Commissioner regarding
28

1 approximately 5,700 acres of real property in Phoenix, Arizona located north of the Central
2 Arizona Project Canal and south of Pinnacle Peak Road between 32nd Street and 64th Street.

3 13. NPP filed a special action appeal of a City of Phoenix Board of Adjustment
4 decision in Maricopa County Superior Court of Arizona captioned *Desert Ridge Community*
5 *Association, et al. v. City of Phoenix, et al.*, Case No. LC2007-000011 (the “Action”).

6 14. Epicenter and Gray filed a Counterclaim, First Amended Counterclaim, and
7 Second Amended Counterclaim in the Action against NPP, Desert Ridge Community
8 Association (“DRCA”), and CityNorth, LLC (“CityNorth”). These counterclaims are
9 hereafter collectively referred to as the “Litigation Claim.”

10 15. Simpson Thacher & Bartlett, LLP (“STB”) represented Epicenter and Gray in
11 the Action.

12 **B. STB Requires Funding—the 2009 Agreement.**

13 16. From April 30, 2009 through November 20, 2009, STB had been paid
14 \$1,162,885.76 in fees and costs.

15 17. Nevertheless, in December 2009, STB told Epicenter and Gray that STB would
16 withdraw the next morning unless Epicenter and Gray obtained litigation financing from
17 Burford to immediately pay STB.

18 18. Epicenter and Gray attempted to negotiate with Burford for litigation funding.

19 19. During the course of these negotiations, Ganymede did not yet exist.

20 20. Ganymede was not formed until December 22, 2009.

21 21. Ganymede was formed for the sole purpose of acting as the counter-party on the
22 agreements described herein.

23 22. During the course of the negotiations, Burford would not entertain or make any
24 revisions or changes to the agreement forms. The terms were presented on a take-it-or-leave it
25 basis.

1 23. On December 22, 2009, the day Burford ostensibly formed Ganymede,
2 Epicenter and Gray entered into a Forward Purchase Agreement with it regarding the
3 Litigation Claim (“2009 Agreement”).

4 24. Through the 2009 Agreement, Defendants agreed to provide \$5 million in
5 funding to be applied to STB’s fees in exchange for Epicenter and Gray granting a contingent
6 interest in any recovery from the Litigation Claim.

7 25. On December 22, 2009, STB amended its engagement letter with Epicenter and
8 Gray. The amendment was negotiated between Defendants and STB without Epicenter’s and
9 Gray’s participation, and was thereafter presented to Epicenter and Gray as a negotiated
10 agreement, in which Epicenter and Gray had no choice.

11 26. The December 22, 2009 letter provided that STB would reimburse itself for all
12 past due fees and disbursements, and would deduct future invoices, from the \$4 million
13 deposit from Defendants; and that, in the event of a judgment in excess of a stated amount,
14 STB would be entitled to a fee “premium.”

15 27. Once STB starting receiving payment from Defendants, STB’s billings rose
16 suddenly and dramatically in amount, so that they were quickly triple the amount of the prior
17 billings.

18 28. Defendants made no effort to control litigation costs with STB, though they had
19 the right to do so.

20 29. In May 2010, less than five months after the 2009 Agreement, Epicenter and
21 Gray reached a settlement of a portion of the Litigation Claim with DRCA for approximately
22 \$6,000,000, of which \$4,000,000 was paid to Defendants. The other \$2 million, on
23 information and belief, was paid to STB for invoices owed.

24 30. Consequently, less than five months after execution of the December 2009
25 Agreement, Defendants were repaid such that their net cash investment was \$1,000,000, for
26 which the 2009 Agreement granted them a 40% interest in the Litigation Claim.

27 **C. The 2010 Agreement.**

1 31. STB's bills continued to rise, unchecked by Defendants.

2 32. STB continued to threaten to resign unless Epicenter and Gray entered into
3 further agreements with Defendants so Epicenter and Gray were forced to do so.

4 33. The parties entered into a Restated and Amended Forward Purchase Agreement
5 regarding the Litigation Claim on August 3, 2010 (the "2010 Agreement").¹

6 34. Under the 2010 Agreement, Defendants agreed to increase their funding of STB,
7 in exchange for additional returns from the Litigation Claim.

8 35. On October 19, 2010, Epicenter and Gray obtained final judgment in the State
9 Court on the Litigation Claim against NPP and CityNorth in the amount of \$110,658,800 plus
10 interest.

11 36. After this time, STB continued to represent Epicenter and Gray to collect on this
12 judgment.

13 37. During post-judgment collections, STB continued to charge Epicenter and Gray
14 exorbitant fees and threaten to withdraw if they were not quickly paid, as a result of which
15 Epicenter and Gray were forced to enter into further agreements with Defendants in January,
16 October, and December of 2011. The amendments entitled Defendants to greater returns from
17 the Litigation Claim, and extended the deadlines for payment.

18 38. By December 2011, Defendants had paid \$6,775,000 in legal fees, but had been
19 repaid all but \$2,775,000 of that amount.

20 **D. Settlement of the Litigation Claim With NPP and Execution of Notes.**

21 39. On May 31, 2012, Epicenter and Gray negotiated a Settlement Agreement with
22 respect to the Litigation Claim which provided that Epicenter and Gray would receive an
23 Assignment of the Lessee's Rights under the terms of the Arizona State Land Department
24 ("ASLD") Commercial Lease No. 03-52415, the assignment of the Master Development
25
26

27 ¹ Capitalized terms that are not otherwise defined in this complaint have the meaning ascribed
28 to them in the referenced contracts.

1 Rights, the assignment of the Declarant's Rights and all intellectual property related thereto
2 (collectively, such property interests shall hereafter be referred to as the "Estates' Property").

3 40. Upon information and belief, at this time the real estate portion of the Estates'
4 Property alone was worth well in excess of \$100 million.

5 41. Immediately upon learning of the NPP settlement, Defendants began demanding
6 immediate cash payment from Epicenter and Gray based on the incorrect position that the
7 agreements required cash payment upon settlement.

8 42. The settlement, however, transferred the lessee's rights under Commercial Lease
9 No. 03-52415 to Epicenter and Gray, and so was not a settlement that included a payment of
10 cash.

11 43. Nevertheless, Defendants threatened to declare a default under the agreements
12 with Epicenter and Gray and sue Epicenter and Gray if Epicenter and Gray did not agree to a
13 resolution.

14 44. Defendants and Epicenter and Gray therefore executed an "Outline of Terms"
15 dated December 12, 2012. In that Outline, Defendants set forth terms under which they
16 proposed to convert the Preferred Return plus 40% "interest" in the Litigation Claim (referred
17 to in the 2011 Supplemental Agreement as the Resolution Amount), into a "Liquidated Sum."
18 Following is the critical information contained in or related to the Outline of Terms:

19 a. The Outline of Terms states that, "[a]s of September 30, 2012, the total
20 amount owing by Gray (Debtors) to Ganymede (Ganymede) is agreed to be
21 \$50,713,000 ('Liquidated Sum'). The Liquidated Sum shall be subject to a
22 discount for early payment as set forth on the attached Exhibit 'A' and shall be
23 decreased by the amount of any Net Proceeds and Gray Cash Payments as
24 defined below. The Discount for early payment shall apply only if the payment
25 is made by the applicable date set forth on Exhibit A."

26 b. At the date of the Outline of Terms, Exhibit A to the Outline of Terms would
27 have required payment to Defendants of \$16,419,000.
28

1 c. The Outline of Terms required the Total Amount to be secured by a first
2 position deed of trust on, and a lien upon, all of the Estates' Property, not just
3 40% of the Estates' Property.

4 d. The Outline of Terms required payment of \$37,612,000 by December 31,
5 2015, or declared that the Total Amount would thereafter bear interest at 35%
6 compounded monthly.

7 45. Epicenter and Gray executed a Promissory Note dated April 22, 2013, in the
8 amount of \$50,713,000 (the "Note"). The Note states that it is governed by Arizona law.

9 46. Defendants concocted the contrived "debt" structure and the fictitious
10 \$50,713,000 amount owed. In part, such structure was demanded by Defendants for the
11 purpose of minimizing United States taxes. In fact, at the time the Note was executed, the net
12 amount loaned by Defendants was only \$2,775,000. Reflecting that amount as the debt,
13 however, would have shown that Defendants were subject to taxable gains on the \$47,938,000
14 profit they stood to make on the Note.

15 47. Defendants did not advance any additional funds to or for the benefit of
16 Epicenter and Gray at the time the Note was executed.

17 48. Epicenter and Gray executed a deed of trust to secure the Note, which
18 encumbered all of the Estates' Property. That deed of trust states that it is governed by
19 Arizona law, and it was recorded with the Maricopa County Recorder.

20 49. On September 26, 2013, Epicenter and Gray and Defendants entered into an
21 agreement through which Ganymede received payment of \$1,349,233 in exchange for a
22 release of a portion of property from the deed of trust.

23 50. After that payment, the net capital invested by Defendants in the pursuit of the
24 Litigation Claim by Epicenter and Gray was, on information and belief, approximately
25 \$1,425,767.

1 **E. Defendants Publicly Market the Note, Harming Epicenter and Gray.**

2 51. Upon information and belief, by March 2015, and despite their custom and
3 practice of modifying and extending Epicenter's and Gray's payment obligations, Defendants
4 decided that they did not wish to even wait until the maturity date of the Note to get repaid.

5 52. At this time, Epicenter and Gray were not in default of any obligations under the
6 Note.

7 53. Instead, upon information and belief, Defendants decided that they would rather
8 sell the Note at a discount than wait for payment in full. At the time, Defendants only had an
9 investment of approximately \$1.43 million in a note with a face amount of more than \$50
10 million.

11 54. In or around March 2015, Defendants began an aggressive and highly public
12 advertisement of the Note.

13 55. Defendants hired a broker, HFF, to help them market the Note.

14 56. HFF's marketing materials were publicly circulated with one or more widely
15 disseminated email "blasts" that went to virtually everyone who was even tangentially
16 connected to the Phoenix real estate market.

17 57. Upon information and belief, an agent of Burford acting for the benefit of all
18 Defendants instructed HFF to send the email blast to its vast group of recipients.

19 58. Upon information and belief, Defendants gave this instruction despite knowing
20 Epicenter and Gray were actively engaged in negotiations with credible buyers and
21 simultaneously working with prospective lenders to satisfy the Note.

22 59. The HFF materials stated that the asking price for the \$50 million Note was
23 \$30.6 million.

24 60. Defendants knew, or should have known, that advertising the Note at an asking
25 price well below the Note's face value would signal to participants in the Arizona real estate
26 market – including all recipients of the email blast – that Epicenter and Gray were in financial
27 distress.

1 61. In the face of that unmistakable signal, no reasonable buyer would enter into a
2 transaction with Epicenter and Gray because of the perceived risk that Epicenter and Gray
3 would default.

4 62. Similarly, no buyer would pay a market price for the real property collateral
5 (which was worth several times the face amount of the Note), or refinance the debt (with face
6 amounts of \$50,713,000 and \$2,956,703.66) when the senior note was being advertised on the
7 open market for \$30.6 million.

8 63. It was obvious to prospective purchasers that a price of \$30.6 million for the
9 Note and deed of trust could, upon default, translate to a price of \$7.28/square foot for the real
10 estate – 75-85% less than the land was actually worth at that time.

11 64. Upon information and belief, Defendants additionally authorized HFF to widely
12 disseminate the Note. Consequently, prospective buyers and lenders knew the interest rate
13 Epicenter and Gray were paying. With knowledge of that rate, prospective buyers no longer
14 wished to deal with Epicenter and Gray as those buyers thought Epicenter and Gray were at
15 imminent risk of default, at which time buyers could purchase the land for far less than its
16 market value. Additionally, lenders who had previously been negotiating low double-digit
17 rates suddenly demanded exponentially more.

18 65. Consequently, Defendants' marketing efforts, including the email blast,
19 prevented Epicenter and Gray from entering into a transaction through which they could have
20 refinanced or extinguished the Note.

21 66. Prior to HFF's email blast, the Arizona real estate market had begun to show
22 signs of recovery.

23 67. The HFF marketing immediately caused the Estates' Property and Epicenter and
24 Gray themselves to be viewed as distressed.

25 68. HFF, at Defendants' direction and with their consent, included the maturity date
26 of the Note in its email blast.

69. As a result, the market became aware of the Note's December 31, 2015 maturity date. The market was unaware of such information prior to the HFF marketing and its highly public "email blasts." Epicenter's and Gray's ability to protect their interests by selling a portion of the Estates' Property to satisfy or refinance the Ganymede Note was destroyed virtually overnight.

70. On January 14, 2016, a Notice of Trustee's Sale and Notification of Disposition of Personal Property was recorded with the Maricopa County Recorder (2016-0026295) regarding approximately 98 acres of vacant property located west of 56th Street and north of the Loop 101 in Phoenix, Arizona (Tax parcel no. 212-32-100G) and the balance of the Estates' Property. Epicenter and Gray would have lost the Estates' Property through that sale.

F. Defendants Sell the Claims to CPF.

71. CPF Vaseo Associates, LLC ("CPF") and Defendants entered into a Sale and Assignment Agreement, dated March 23, 2016 (hereafter, the "Sale Agreement").

72. Under that Sale Agreement, CPF contracted to purchase the claims of Defendants, who had by then acquired STB's claim, for a very substantial discount.

73. On March 30, 2016, after signing the Sale Agreement, CPF was so pleased with the purchase terms that Mr. Robert Flaxman (on behalf of CPF) contacted a possible investor by email stating that, "I have a juicy new deal. Deep distress and big upside. When can we connect?"

74. On May 13, 2016, counsel for CPF sent correspondence to counsel for Epicenter and Gray notifying Epicenter and Gray that the claimed payoff amount as of May 16, 2016 for the Note was a total of \$54,853,149.17, plus interest accruing at \$52,440.74 per day thereafter. The same correspondence notified Epicenter and Gray that the claimed payoff amount for the STB Note as of May 16, 2016 was \$3,674,319.86, plus interest accruing at \$610.76 per day thereafter.

COUNT I

Declaratory Relief

1 75. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

2 76. Upon information and belief, Ganymede was inadequately capitalized for its
3 business.

4 77. At all times relevant to this litigation, Ganymede failed to maintain corporate
5 formalities.

6 78. At all times relevant to this litigation, Burford continuously demonstrated a
7 complete and utter lack of adherence to the separate legal personalities of itself and Ganymede
8 by making all high-level decisions on Ganymede's behalf in its dealings with Epicenter and
9 Gray.

10 79. Further, upon information and belief, Burford and Ganymede failed to honor
11 Ganymede's corporate form.

12 80. Burford exercised substantially total control over the management and activities
13 of Ganymede during Ganymede's entire existence as a corporate legal entity. Ganymede had
14 no separate mind, will, or existence of its own, but instead its sole purpose was to serve as a
15 business conduit for Burford during its dealings with Epicenter and Gray.

16 81. During the dealings with Epicenter and Gray in which Ganymede was the named
17 party to the agreements, Burford representatives completely disregarded Ganymede's separate
18 legal personality by directly communicating with Epicenter and Gray on Ganymede's behalf,
19 approving Ganymede's transactions through Burford's own board, and referring to Burford as
20 Epicenter's and Gray's creditor despite Ganymede's status as the secured party of record.

21 82. For example, in discussions about the necessity of a "pre-negotiation letter" and
22 the terms therein, Epicenter and Gray negotiated and communicated exclusively with Burford.

23 83. In the discussions addressing the terms of the pre-negotiation letter, Burford
24 informed Epicenter and Gray that "[w]e are not asking you to give up rights you now have (we
25 don't see how you could possibly have a claim against us). We simply want you to
26 acknowledge that the debt is coming due and you don't have claims against us – a standard
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1 request for a creditor whose debtor wants to negotiate a forbearance.” The person writing the
2 word “we” worked for Burford and was using it to refer to Burford, not Ganymede.

3 84. In discussions addressing Epicenter’s and Gray’s closing of an outlet mall sale to
4 pay down the Note, Burford mentioned the Burford board’s ability to vary the terms of the
5 deal as well as the Burford board’s desire to gain extra returns on the deal if the closing were
6 delayed beyond September 2014.

7 85. In the discussions addressing Epicenter’s and Gray’s paydown of the Note,
8 Burford informed Epicenter and Gray that Burford and STB had reached an agreement that
9 permitted Burford, not Ganymede, to accept an offer by a particular date and have Epicenter
10 and Gray roll the STB Note into a new note for the same value with new security.

11 86. In the discussions addressing Epicenter and Gray’s paydown of the Note,
12 Burford informed Epicenter and Gray that Burford’s board had given their final approval and
13 the deal was ready to close.

14 87. In later negotiations relating to Ganymede’s Note, on which Ganymede was the
15 payee, Burford told Epicenter and Gray that their “ideal source of financing would be an entity
16 with a lower cost of capital, and lower return expectations than Burford.”

17 88. Burford intended to utilize Ganymede as nothing more than a shell company,
18 and made these intentions known by approving Ganymede’s purported transactions with its
19 own board as well as referring to itself as Epicenter’s and Gray’s creditor despite Ganymede’s
20 status as the secured party of record.

21 89. Observance of the separate legal personalities of Burford and Ganymede would
22 sanction fraud and promote injustice against Epicenter and Gray.

23 90. Epicenter and Gray are entitled to pierce the corporate veil between Burford and
24 Ganymede, and hold Burford liable for all damages suffered by Epicenter and Gray as a result
25 of its conduct.

26 91. Epicenter and Gray are entitled to a declaration that Ganymede’s corporate veil
27 may be disregarded as a mere alter ego of Burford.

1 92. Disregarding Ganymede's separate legal status is necessary to prevent injustice.

2 93. There is an actual and justiciable controversy between Epicenter and Gray and
3 Defendants concerning whether Burford owes Epicenter and Gray a contractual duty of good
4 faith and fair dealing under the Note.

5 94. Epicenter and Gray are entitled to a declaration that Burford owed Epicenter and
6 Gray a contractual duty of good faith and fair dealing pursuant to the Note.

7 95. This declaratory judgment action arises out of contract, so Epicenter and Gray
8 are entitled to attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01.

9 **COUNT II**

10 **Breach of the Duty of Good Faith and Fair Dealing**

11 96. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

12 97. The duty to comply with the implied covenant of good faith and fair dealing is
13 implied in all contracts, including the Note.

14 98. Defendants breached their duty of good faith and fair dealing by taking actions
15 inconsistent with the agreed upon purpose and reasonable expectations of the parties when
16 entering into the Note.

17 99. Under the Note, Epicenter and Gray were to have the benefit of the originally
18 advanced funds, with no obligation to repay until the agreed-upon maturity date.

19 100. Defendants established a routine practice of granting extensions to the maturity
20 date during the parties' prior course of dealing.

21 101. Then, without notice to Epicenter and Gray, Defendants decided that they did
22 not want to wait even for the maturity date to be repaid.

23 102. Defendants decided they would instead prefer to get paid sooner, and therefore
24 took steps to suggest to participants in the Arizona real estate market that the debt was
25 distressed. Defendants were willing to accept less than face value for the Note because
26 Defendants only had a net investment of approximately \$1.43 million in the Note, and
27
28

1 consequently would reap an enormous profit even if they sold their interest for less than the
2 \$50 million face amount.

3 103. Defendants knew that doing this would prevent Epicenter and Gray from
4 engaging in an orderly liquidation of a portion of the Estates' Property or the refinancing
5 necessary to satisfy the Note.

6 104. Defendants knew that Epicenter and Gray would instead become likely to lose
7 all of the Estates' Property.

8 105. Defendants breached the duty of good faith and fair dealing by interfering with
9 Epicenter's and Gray's ability and right to repay the Note when due.

10 106. As a direct and proximate cause of Defendants' conduct, Epicenter and Gray
11 were damaged in an amount to be proven at trial, but in excess of \$200 million through the
12 loss of the Estates' Property.

13 107. These damages arose naturally from Defendants' breach of the duty of good
14 faith and fair dealing, were foreseeable, and were reasonably within the contemplation of the
15 parties at the time they entered into the Note.

16 **COUNT III**

17 **Tortious Interference with Prospective Business Expectancy**

18 108. Plaintiff incorporates the foregoing allegations as though fully set forth herein.

19 109. Epicenter and Gray had a valid business expectancy in selling part of the
20 Estates' Property to pay off or refinance the Note.

21 110. Burford was aware that Epicenter and Gray had a valid business expectancy in
22 selling part of the Estates' Property to satisfy or refinance the Note.

23 111. Burford knew that Epicenter and Gray were in on-going negotiations with
24 specific buyers to sell part of the Estates' Property to satisfy or refinance the Note.

25 112. While knowing of Epicenter's and Gray's valid business expectancy and on-
26 going negotiations with prospective purchasers, Burford directed HFF to send the email
27 "blast" advertising the Note for sale at a substantial discount.

113. Through its publicly broadcasted marketing efforts, including the HFF email blast, Burford intentionally and wrongfully interfered with Epicenter's and Gray's ability to market the Estates' Property, and thereby destroyed Epicenter's and Gray's prospective business expectancy.

114. As a direct and proximate result of Burford's tortious interference with Epicenter's and Gray's valid business expectancy, Epicenter and Gray have suffered damages in an amount to be determined at trial, but in excess of \$200 million.

DAMAGES

Wherefore, Plaintiff prays for entry of a judgment granting relief as follows:

- A. For orders declaring the parties' rights in Plaintiff's favor as described above;
- B. For damages in an amount to be proven at trial;
- C. For pre- and post-judgment interest;
- D. Costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01; and
- E. For such other and further relief as the Court determines just and necessary to provide Plaintiffs with a complete remedy under the circumstances.

RESPECTFULLY SUBMITTED this 14th day of September, 2018.

STINSON LEONARD STREET LLP

/s/ Stefan M. Palys

Michael C. Manning

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Attorneys for Plaintiff

ORIGINAL e-filed via AZTurboCourt
this 14th day of September, 2018:

Clerk of the Court
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003

/s/ Cynthia Fischer