IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

---x

OCALA FUNDING, LLC,

Plaintiff,

vs.

DELOITTE & TOUCHE, LLP,

Defendant.

---x

CASE NO. 11 30957 CA 30

COMPLAINT

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155-2 100227

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DEBRA SANCHEZ

Plaintiff Ocala Funding, LLC ("Ocala"), for its complaint against Defendant Deloitte & Touche LLP ("Deloitte"), alleges on information and belief as follows:

INTRODUCTION

1. As the financial statement auditor of Taylor Bean & Whitaker Mortgage Corporation ("TBW"), Defendant Deloitte owed a duty to determine if TBW's financial statements "present[ed] fairly, in all material respects, the financial position of the Company" such that "the financial statements [were] free of material misstatement, whether caused by error or fraud."

2. As Deloitte admitted under oath through the sworn testimony of its partner, Edward Corristan, it was Deloitte's duty to detect fraud at TBW: "Auditors are expected to identify fraud that would be material to the financial statements." Consistent with that understanding, each year, for seven consecutive years, Deloitte certified that TBW's financial statements were "free of material misstatement" due to error or fraud.

3. Deloitte's certification was false. Its client, TBW, was one of the largest privately held mortgage originating companies in the United States. By July 2009, TBW appeared to be originating over $30 billion in loans per year and was servicing 512,000 mortgage loans. In fact, however, Deloitte was grossly and negligently certifying hundreds of millions of dollars of fake assets and failed to detect a massive fraud during any of its seven audits.

4. Deloitte missed this fraud because it simply accepted management's conflicting, incomplete and often last-minute explanations of highly-questionable transactions, even though those explanations made no sense and were flatly contradicted by the documents in Deloitte's possession. Deloitte repeatedly ignored what it now admits were red flags in conscious and reckless disregard of its public duty—and simply failed to do its job.

5. Ocala relied on Deloitte to do its job. In reliance on Deloitte's audit opinion certifying that TBW's financial statements were "free of material misstatement" due to error or fraud, Plaintiff Ocala purchased mortgages from TBW, which were in turn sold by Ocala to Freddie Mac. In further reliance on Deloitte's audit opinion, Ocala issued billions of dollars in asset-backed commercial paper or promissory notes, (the "Ocala Notes"), to major financial institutions to finance the purchase of mortgages.

6. Deloitte's clean audit opinions certifying there was no material misstatement due to error or fraud were so important they were made a condition for Ocala to even issue Ocala Notes. Moreover, Ocala relied on Deloitte to detect material misstatements in the financial statements due to error or fraud.

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7. Ocala's reliance was misplaced. Despite Deloitte's certification, it turned out that many of the mortgages purchased by Ocala were fake. Still further, certain officers of TBW (the "Looters") looted hundreds of millions of dollars from Ocala. From 2006 through 2009, hundreds of millions of dollars of Ocala assets were missing, and, by the time of TBW's collapse in 2009, more than $1.5 billion of assets purportedly backing the Ocala Notes were missing. Had Deloitte done its job and detected the material misstatements in TBW's financial statements and the fraud, Ocala, and Bank of America, as the collateral agent and trustee for Ocala, would and could have taken action to protect their interests and stop the looting. Still further, there were innocent directors at TBW who could and would have taken action if Deloitte had done its job and not certified, year, after year, after year, fraudulent financial statements.

8. Deloitte's grossly negligent audits breached its duty to Ocala—a duty Deloitte already admitted to under oath. Deloitte's partner in charge of Deloitte's audits, Edward Corristan, swore under oath that Deloitte owed a duty to the users of Deloitte's audited financial statements and that Ocala and its lenders and agents would be users of Deloitte's audited financial statements.

9. Moreover, Ocala was part of the public to which Deloitte, as certified *public* accountants, owed a duty. Deloitte's public role as certified *public* accountants is so important that the United States *and* the Florida Supreme Courts have declared them "public watchdogs," because investors and creditors like Ocala depend on Deloitte to do its job and certify only true financial statements:

> By certifying the public reports that collectively depict a corporation's financial status, **the independent auditor assumes a *public* responsibility** transcending any employment relationship with the client. The independent public accountant performing this special function **owes ultimate allegiance** to the corporation's creditors and stockholders, as

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> well as **to investing public**. This **"public watchdog"** function demands that the accountant maintain total independence from the client at all times and requires **complete fidelity to the public trust**.

KPMG Peat Marwick v. National Union Fire Ins., 765 So.2d 36, 38 (Fla. 2000); *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18, 104 S.Ct. 1495, 1503 (1984)).

10. The ethical standards governing certified public accountants make clear that the public to whom Deloitte owes a duty includes "clients, credit grantors, governments, employers, investors, the business and financial community, and the others who rely on the objectivity and integrity of certified public accountants to maintain the orderly functioning of commerce." American Institute of Certified Public Accountants ("AICPA") Code of Prof. Conduct, ET § 53. Thus, the ethical standards required Deloitte's "*acceptance of its responsibility to the public*." *See id.*

11. Deloitte's gross negligence harmed the public, as thousands lost their jobs, homes were lost, investors lost their money, and the mortgage financial crisis in Florida was inflamed.

12. Deloitte's gross negligence also caused Ocala to lose over $1.6 billion. When Deloitte's gross negligence finally came to light and the looting of Ocala was discovered, Ocala had virtually none of the collateral backing the Ocala Notes. TBW went into bankruptcy, and members of the very management Deloitte was supposed to be the public watchdog over were indicted and convicted of fraud for their roles in looting TBW and Ocala.

13. By this action, Plaintiff Ocala seeks to hold Deloitte responsible for the more than $1.6 billion in damages it caused Ocala.

PARTIES, JURISDICTION AND VENUE

14. Plaintiff Ocala Funding, LLC is a resident of Florida with its principal place of business in Florida.

15. Defendant Deloitte & Touche LLP is a limited liability partnership and its partners reside in Florida.

16. Jurisdiction is proper in the Circuit Court because Plaintiff seeks damages in excess of $15,000.

17. Venue is appropriate in Miami-Dade County because Deloitte transacts its customary business in Miami-Dade County, has an office in Miami-Dade County at 333 SE 2d Avenue, Suite 3600, Miami, Florida 33131, its partners reside and work in Miami-Dade County, and it has representatives and agents in Miami-Dade County.

18. Deloitte is subject to personal jurisdiction in Florida pursuant to Florida Statutes §48.193 because, as set forth more fully herein, it has conducted substantial and not isolated business and activities within Florida, and it has itself or through an agent, including but not limited to its partners, operated, conducted, engaged in or carried on business in this State which gave rise to this cause of action, committed a tortious act in this State, or caused injury to persons or property in Florida resulting from its activities within and outside of this State in connection with services provided in Florida or the solicitation of business in this State.

FACTS

I. TBW's Business: Mortgage Origination

19. TBW was a mortgage origination company. Incorporated in 1991 in the State of Florida, TBW grew to become one of the largest privately held independent (*i.e.*,

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non-bank owned) mortgage originator companies in the United States. By July 2009, TBW originated over $30 billion in loans per year and was servicing 512,000 mortgage loans. It employed over 2,500 people, mostly out of its headquarters in Ocala, Florida and in Miami-Dade County.

20. TBW's business model was to originate and service mortgage loans. Typically, it did not hold the mortgages that it originated and collect principal and interest payments for its own account as a traditional mortgage provider might. Instead, it resold the mortgages ("loan sales") or packaged the mortgages into pools and sold participation interests in (or "securitized") them for investment by third-party investors.

21. In large part, the loan sales were made in the secondary market to third-party investors including the Federal Home Loan Mortgage Corporation ("Freddie Mac") or to commercial financial institutions like Citibank or Wells Fargo who either held the loans or securitized them. In most cases, the securitizations were sold to investors who bought interests in the mortgage payment streams, which interests were guaranteed by Freddie Mac or the Government National Mortgage Association ("Ginnie Mae").

22. TBW's income was derived principally from servicing the loans it sold to or securitized for investors. TBW earned that income by collecting mortgage payments from homeowners or mortgagees and disbursing them to the third-party investors in the loans. Although its servicing operation was technically separate from its acquisition and resale operations, TBW was dependent upon generating new mortgage sales (and then resales or securitizations with the support of Freddie Mac and Ginnie Mae) to keep its servicing operations growing.

II. Financing TBW with Colonial Bank

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23. TBW could not finance its business alone. TBW had regular, immediate cash needs to fund home purchases upon their closings, and interim finance needs to bridge the gap between financing loans at closing and locating investors for resale or securitization.

24. TBW also had operational financing needs to fund its own purchases of whole loans, repurchase obligations related to the loans it sold or securitized, and funding its loan servicing operations. Because processing $30 billion of mortgages a year was a cash-intensive enterprise that required more financing firepower than it possessed alone, TBW depended on other lenders to finance its operations.

25. In the short term, TBW relied on a variety of lines of credit and financing vehicles, initially with a banking partner, Colonial Bank ("Colonial"), and later, through Ocala, a wholly-owned subsidiary.

26. Financing from Colonial came in the form of two facilities, a "COLB" and an "AOT" facility. COLB was a mortgage loan participation facility at Colonial Bank through which Colonial Bank purchased interests in residential mortgage loans from TBW pending resale of the loans to third-party investors. When TBW subsequently resold those mortgages—which it was designed to do within 90 days of the COLB funding—Colonial Bank intended to recoup its investment. TBW retained legal title to the sold mortgages while remaining solely responsible for servicing the participating loans.

27. The AOT facility was likewise designed as a holding pattern for loans, this one to temporarily finance loans that would ultimately be securitized or sold in pools. Like the COLB facility, purchases under the AOT facility included a "sale" of the

mortgage loans to Colonial Bank, pending their resale to a third-party investor. Through these facilities, TBW was able to receive short term financing while retaining the ability to resell the participating loans. As of the date of TBW's final audited financial statements, the balance owed on the COLB and AOT facilities was $1.27 billion and $1.84 billion, respectively.

III. Financing TBW Through Ocala

28. Ocala was formed in January 2005 to offer TBW a method of securing additional funding for mortgage loans, both to fund closings on home purchases as well as to provide bridge financing until those mortgages could be resold or securitized. It was established as a bankruptcy remote subsidiary of TBW. Moody's and Standard and Poor's, the two rating agencies that rated the Ocala Notes, required that Ocala be separate and apart from TBW as a condition of their investment grade rating of the Ocala Notes. Ocala therefore was required by its formation documents to be separate from TBW, and did maintain separate accountants, books and records. Ocala further had a separate member who was independent from TBW. Ocala therefore was and is a separate entity from TBW. In fact, pursuant to a final order of the United States Bankruptcy Court for the Middle District of Florida, Plaintiff Ocala has a $1.6 *billion* allowed claim *against* TBW.

29. The majority of the mortgages purchased by Ocala from TBW were in turn sold by Ocala to Freddie Mac. To raise the funds necessary to purchase mortgages from TBW, Ocala issued asset-backed commercial paper or promissory notes, (*i.e.*, the "Ocala Notes").

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30. The Ocala Notes were required to be over-collateralized and the collateral took various forms through the course of the transaction cycle. First, the mortgages purchased by Ocala would be the collateral securing the Ocala Notes. Then, when Ocala sold the mortgages to Freddie Mac, the proceeds would in turn become the collateral securing the Ocala Notes. Under the Ocala Note agreements, as long as certain conditions were met, the proceeds from Ocala's sale of the mortgages could then be used to purchase new mortgages from TBW or pay now the Ocala Notes.

31. Ocala's continued funding of TBW-originated mortgages was expressly dependent on Deloitte's continuing representation that the TBW audited financial statements were "fairly stated" and free of material misstatement due to error or fraud.

32. A typical transaction would be as follows. TBW would deliver to Ocala a list of the mortgages TBW was offering to Ocala for purchase and the mortgage documentation. Once Ocala approved the mortgages for purchase, Ocala would pay TBW, using the proceeds from the sale of the Ocala Notes. Under the Ocala facility agreements, Ocala could only retain 10% or less of the mortgages for over thirty days. Accordingly, the sale of the mortgages to Freddie Mac occurred quickly thereafter Ocala's purchase of the mortgages from TBW. Ocala would deliver the loan documentation to Freddie Mac's agent and Freddie Mac had fifteen days to reject or purchase the mortgages. Upon payment by Freddie Mac to Ocala, the cycle would begin again.

33. Ocala was required to maintain collateral for the Ocala Notes in the form of cash or mortgage loans in an amount greater than the value of the outstanding Ocala Notes issued. This collateral was reported and verified as part of the consolidated

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financial statements that Deloitte audited and certified as containing no material misstatement due to error or fraud.

IV. Ocala Relies—and Deloitte Knows it—on Deloitte's Audited Financial Statements to Issue $1.6 Billion in Ocala Notes and to Purchase Mortgages

34. There were two dedicated financial institutional investors in the Ocala Notes, Deutsche Bank AG ("DB") and BNP Paribas ("BNP"). Under the Ocala facility documents, TBW was required to deliver to Ocala its audited financial statements, and TBW represented to Ocala that these financial statements fairly presented the financial condition of TBW. Deloitte's audits of TBW's financial statements—and specifically its clean audit opinion certifying that there were no material misstatements due to error or fraud—were an express condition precedent to Ocala issuing the Ocala Notes and to Ocala's purchase of TBW mortgages. Deloitte therefore knew that its audits would be relied upon because it was required to review these very Ocala facility documents with these very conditions as part of its audit.

35. Specifically, Deloitte understood that creditors like Ocala and DB and BNP would be relying on Deloitte's audited financial statements. In sworn testimony, Deloitte's engagement partner, Edward Corristan, has confirmed his and his team's understanding that Deloitte had a duty to the users of the financial statements: "[T]he responsibility that we have is to the entity or the people that engage us and then the users of the financial statements."

36. In reliance on Deloitte's clean audited financial statements, Ocala issued the Ocala Notes from 2005 through July 20, 2009. As of July 20, 2009 and through the date hereof, there remain outstanding Ocala Notes of approximately $1.75 billion.

V. Deloitte: Auditors of TBW's Financial Statements

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37. Deloitte served as TBW's auditors for fiscal years 2002 through 2009.

38. In each of those years, Deloitte promised in writing to audit financial statements prepared by management and "to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud." As Deloitte admits, a purpose of their audit was to detect fraud by management. In fact, Deloitte was required to view management's assertions with "professional skepticism."

39. Deloitte's engagement was for more than just audit work, however. In addition to compliance with generally accepted auditing standards ("GAAS") and ensuring TBW's compliance with generally accepted accounting principles ("GAAP"), Deloitte undertook to "[r]eport on [TBW's] compliance with laws and regulations" since noncompliance with those laws and regulations "may be material to the financial statements." Deloitte likewise agreed to "issue a report on illegal acts," test the "accounting, servicing and administrative records of the Company," and "obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud."

40. Consistent with its responsibility, Deloitte purported to conduct an audit of each of TBW's year-end financial statements, dated April 30, 2002 through April 30, 2008, the date of Deloitte's final completed audit of TBW's financial statements.

41. After each such audit, year after year and without fail, Deloitte represented that TBW's financial statements presented fairly, in all material respects, its financial position and the results of its operations, changes in net assets, and cash flow for each year, in conformity with GAAP.

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VI. Deloitte's Error: Fraud at TBW, Looting of Ocala, and Material Misstatements in TBW's Financial Statements

42. Deloitte was wrong.

43. In fact, beginning as early as 2002, TBW's operations—and its financial statements—were infected with a growing, and ultimately massive, fraud.

44. The fraud itself was straightforward. With the assistance of conspirators at its principal short term financier, Colonial Bank, at which TBW maintained more than 116 accounts, 110 of which were dedicated to loan servicing, certain members of TBW's management, the Looters, looted funds for their personal use from TBW and Ocala.

45. At the outset, the fraud consisted simply of shifting money among different accounts at Colonial with the intention of disguising overdrafts TBW incurred in its main operating account. By shifting, or "sweeping," overnight money from auxiliary accounts into its master account and then returning the money the following day, the Looters sought to maintain the impression that they were not overdrawing on the accounts.

46. When the deficit grew larger, however, this simple device became inadequate to cover the Looters' fraud. Accordingly, as early as 2003, the Looters began to draw down on the COLB facility. Because use of the COLB facility was predicated on sales of mortgage loans, however, the fraudsters had to manufacture false mortgage data to support phantom sales.

47. They did so. The false data supplied to Colonial Bank to support the phantom sales increased year by year and grew more varied in type. Specifically, as the basis for sales, the Looters included for sale mortgage loans that had already been committed or sold to third party investors, mortgage loans that simply did not exist, and

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mortgages whose value was aged or otherwise materially impaired. As the fraud grew, the Looters created new fake mortgage loans to replace the old ones.

48. As the Looters scrambled to keep the fraud going, the Looters focused more and more on the AOT facility. From mid-2004 through 2009, the Looters caused TBW to sell hundreds of millions of dollars of additional fictitious securitizations to Colonial through the AOT facility, which in reality had no pools of loans collateralizing them.

49. The Looters also looted hundreds of millions of dollars from Ocala for their own benefit and to the detriment of Ocala. As a result, the Ocala Notes were drastically under-collateralized. Specifically, the Looters took hundreds of millions of dollars from Ocala's bank account to further their fraud. The looting caused there to be "double-sold" and even "triple-sold" mortgages where Colonial Bank, Ocala and Freddie Mac all believed they owned the same mortgages. In order to continue their looting, the Looters misrepresented the amount of collateral for the Ocala Notes so that Ocala could continue to issue the Ocala Notes under the terms of the Ocala facility agreements. Despite obvious red flags, Deloitte recklessly and with gross negligence did not reveal the fraud.

50. For their looting to work, the Looters depended on grossly negligent audits from Deloitte. The Looters were so confident in Deloitte's gross negligence that they simply plugged in a false account receivable on TBW's consolidated balance sheet to mask the shortfall in Ocala's collateral. Again, Deloitte repeatedly overlooked or chose to ignore the red flags that gave notice of the material misstatements and the looting.

51. As a result, Ocala experienced significant shortfalls in the amount of collateral it actually possessed to back the outstanding Ocala Notes. Where Ocala was required to have collateral (in cash or loans) *in excess* of the amounts of the Notes it issued, misappropriated funds and double-sold mortgages in fact resulted in a shortfall of that collateral in excess of $1 billion.

52. Finally, and obviously, this fraud impacted TBW's financial statements, which grossly overstated its assets and its income, and understated its liabilities. TBW's falsified operations trickled down—flooded down—and resulted in the material misstatement of TBW's financial statements. Receivables allegedly owed to TBW for fake mortgage loan sales were not owed, and income earned on those sales was overstated. Similarly, income of mortgage loans held for sale was overstated.

53. At bottom, more than half a billion dollars of assets on TBW's financial statements—assets that were critical to Deloitte's clean audit opinion and therefore Ocala's continuing operations—did not exist. On TBW's April 2008 balance sheet alone, hundreds of millions in accounts receivable—money supposedly owed to TBW and counted as an asset—were fake.

54. In reliance on these materially false financial statements, Ginnie Mae continued to approve TBW on an annual basis as an issuer of Ginnie Mae-backed securities. Ginnie Mae also increased the amount of securities TBW could issue from approximately $14.8 billion to $26.8 billion.

VII. Deloitte's Gross Negligence

55. Deloitte did not miss the fraud by accident, but as the result of gross negligence in violating GAAS, failing to understand TBW's business, failing to answer

its own legitimate questions that would have uncovered the fraud, and failing to recognize—*even to this day*—the bogus explanations of "off balance sheet transaction" as an obvious fraud.

56. In performing audits of financial statements, certified public accountants must follow generally accepted auditing standards (*i.e.*, "GAAS"). These include:

- *Professional skepticism.* The auditor must exercise professional skepticism and independence in mental attitude;
- *Professional care.* The auditor must exercise due professional care in the performance of the audit and the preparation of the audit report;
- *Evidential matter.* The auditor must obtain sufficient competent evidential matter by inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit;
- *Reliance on objective evidence.* The auditor is not permitted to rely exclusively on representations from management, but must seek and obtain reliable information from independent sources, including third parties; and
- *Audit planning.* The auditor is responsible for planning an audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.

57. More generally, as certified public accountants, Deloitte is a "public watchdog" whose duties run not only to the company that employs it, but to the investing public who relies on its professional, independent assessment of a company's financial statement when making investment decisions. A CPA's failure to honor this duty – or worse still, its willful ignorance of the duty in the name of audit fees or business relationships with its audit client—undermines the company and its investors both.

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58. In violation of these professional standards, Deloitte grossly breached its duties in the conduct of its audits and its professional work.

A. Deloitte Repeatedly Ignores Red Flags

59. As Mr. Corristan admitted under oath, Deloitte saw a red flag on the exact issue that should have revealed the fraud, but did nothing.

60. Essential to TBW's GAAP accounting was an accurate determination of whether, for *accounting* purposes, transactions in the COLB and AOT facilities were properly described as *sales*—in which case TBW would no longer hold the portion of the mortgage loans it sold as an account receivable asset on its own balance sheet—or instead *loans*, in which case TBW would retain the asset, but would also have a corresponding liability for amounts owed on the loans.

61. The purchase agreement between Colonial and TBW provided that a 99% participation interest in the mortgages (the "Participation Interest") would be paid in full in cash immediately upon the sale, called the issuance of a "Participation Certificate." To remove any doubt, TBW obtained a legal opinion (the "True Sale Opinion") that the transfers were a sale, not a loan. The True Sale Opinion specifically stated as well that the transfer of the Participation Interest by TBW to Colonial was to be paid in full immediately upon the issuance of the Participation Certificate. Deloitte testified under oath that it relied upon the True Sale Opinion, and understood that this meant the purchase agreement contract between Colonial and the consideration for the 99% Participation Interest "was paid in full immediately."

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62. Deloitte even admitted under oath through Mr. Corristan that "If—if we were aware of information that said that Colonial was violating their purchase agreement by not paying that amount timely, then, yes, *that would have been a **red flag**.*"

63. But Deloitte did see this red flag, and still did nothing. Deloitte saw—in fact recorded in its own workpapers—that TBW and Colonial were violating their purchase agreement and were not paying the Participation Interest amount on time. Deloitte discovered that rather than payment for the 99% interest being transferred immediately as required by the purchase agreement, as little as a 25% payment was sometimes transferred, and that "advance rates of 25, 50 or 75% are not uncommon." Moreover, when Deloitte checked the numbers, it calculated that at best only 85% of the price was paid, not 99%.

64. In fact, Mr. Corristan confirmed this under oath:

Q. "And in your work paper we calculated only 85 percent was paid, not the full 99 percent, *in violation of the contract,* right?

A. **Yes**, that's what we calculated."

65. Deloitte obtained no competent explanation from TBW of this red flag, although the explanation is now known—the failure to pay the entire amount was critical to the fraud and meant the financial statements were materially misstated.

66. Indeed, Mr. Corristan could not remember doing anything in response to identifying this red flag—not whether it was recorded as a red flag in their workpapers, not whether he talked to anyone about it, and certainly not that it prevented Deloitte from certifying the financial statements to the users, including Ocala.

Q. "You don't recall having a meeting with people on the team and saying, 'Hold it, we've got this big red flag. What are we going to do?' You don't remember that?

A. No, I don't.

Q. **Do you recall talking about it with *anybody*?**

A. **No, I don't."**

67. Even independent of the violation of the contract requirement for payment equal to 99 percent, the fact that advance rates of 25, 50 or 75 percent were being used should have raised a red flag that these transactions were not sales, but rather loans, causing Deloitte's certification of the financial statements to be false. As Deloitte has acknowledged through Mr. Corristan's sworn testimony, "[i]n order to meet the sale, accounting true sale opinions that they had so that it could be treated as a transfer of interest . . . I believe 99 percent was the standard threshold." Deloitte knew that an accurate determination of the substance of the transaction was necessary to determine whether or not TBW was accurately recording its assets.

68. Still further, TBW *could not* have been getting paid for the sale of a 99 percent interests in loans. In 2008, for example, with receivables owed of more than $550 million, TBW would have had to have had outstanding and pending resale more than $55 billion in mortgages *at that moment* in order to have had receivables as large as the financial statements alleged. In fact, TBW showed only $3.6 billion in outstanding and pending mortgages, suggesting a receivable of more like $30 million.

69. These errors were material to the financial statements. Mr. Corristan likewise confirmed the critical nature of this determination in sworn testimony:

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Q. "... [I]s the purpose of this [Deloitte] memo to address whether the transactions of the purchase of the – some percentage qualify as a sale of the loans?

A. Yes.

Q. That's why we're doing this? And that – that conclusion is critical for Taylor Bean's business, is that right?

A. It impacts their financial reporting."

70. Mr. Corristan was right. "Accounts receivable—net" was ultimately defined in TBW's financial statements to include "loan participations that represent the uncollected portion of mortgage loans sold under gestation warehouse arrangements, balances due from sales of mortgage servicing rights, advances, accrued interest, and other receivables, net of amounts estimated to be uncollectible." As evident in the notes to the financial statements, Deloitte defined the bulk of these accounts receivable as monies owed by Colonial Bank on sales of mortgages that had already been completed.

71. But Deloitte's failure to gain support for its determination on this critical issue—one that could and ultimately did materially impact TBW's financial reporting and that was relied on by Ocala as issuer and DB and BNP as purchasers of the Ocala Notes—meant that Deloitte never resolved a critical determination whose thorough examination would have disclosed the truth—that neither the sales or loans were supported by actual consideration, but hundreds of millions in fake assets, leading to Deloitte's false certification that TBW had *more than half a billion* in accounts receivable.

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72. Deloitte thus knew or should have known that the critical condition underlying TBW's accounting for its Colonial loans—a "true sale"—was not satisfied and so TBW's financial statements were materially misstated.

B. Deloitte Overlooked the Looting of Ocala

73. DB and BNP purchased the Ocala Notes, and Ocala used the proceeds from the sale of the Ocala Notes to purchase mortgages from TBW. Deloitte had no engagement letter or other agreement with Ocala. Deloitte audited the consolidated financial statements of TBW, which included a consolidated balance sheet of TBW that included the collateral for the Ocala Notes.

74. Deloitte certified that the financial statements including the collateral for the Ocala Notes were not materially misstated, but Deloitte's certification was false. As Deloitte swore through its partner Mr. Corristan, the Ocala Notes could only be secured, or collateralized, by mortgage loans held for sale ("MLHFS") and cash. But the consolidated balance sheet, audited by Deloitte as of April 30, 2008, demonstrated that there was over $600 *million* dollars in collateral missing!

75. From March 2006 through at least April 2008, Deloitte was engaged specifically to certify the collateral held by Ocala.

76. Despite the fact that the collateral for the commercial paper did not exist, Deloitte certified on a monthly basis that the Ocala Notes purchased by DB and others were fully collateralized. These certifications were false, and Deloitte was grossly negligent in failing to properly calculate that hundreds of millions of dollars in collateral was missing, and by certifying fake assets.

C. Deloitte's Gross Negligence Was Demonstrated by Its Faulty Audit Work

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77. Worse still, Deloitte's failure was not the result of diligent effort, but a failure to properly plan for and achieve an understanding of the business it was auditing. TBW had a requirement to provide audited financial statements 90 days after their year end, which was April 30. Deloitte regularly discussed this requirement with TBW, who made clear that they needed to be able to deliver their financial statements by this date.

78. Consistent with this need, Deloitte completed all of its audit procedures for the April 30, 2008 audit by July 29, 2008. Mr. Corristan confirmed this to be true.

79. On critical areas of the audit, Deloitte was repeatedly struggling to understand the basics of TBW's business operations that were generating hundreds of millions of dollars right up until and even after the date it certified them as correct. Thus, Deloitte's auditors were asking, just hours before the final due date of the audit reports and opinions, for descriptions of key accounts containing billions of dollars in entries, including Gain Due to MSR Capitalization, Loan Points and Fees, and Origination Fees.

80. Deloitte's last minute scrambling included, for example, an email sent by the engagement partner, Mr. Corristan, during the 2008 audit in which, at noon *on the day the audit is due,* he indicates that he has no understanding of the treatment of *$6 billion* in gross debits and credits: "Please take a look at the sorted schedules descending and let's discuss what these entries involve. It appears we should be able to refer to work in other areas here but *I am not sure what you are doing here*. The gross debits and credits in 60100 are over $6 billion." Mr. Corristan confirmed that as of the day of the audit, he was not sure what TBW was doing with $6 billion.

81. The answer from TBW is no more comprehensible, namely that it has something to do with "off balance sheet" facilities. When pressed for specifics, at nearly

8 p.m. on the day the audit is due, TBW officials claim that the "vast majority of the activity and journal entries relate specifically to loan sale activity, and therefore should be reclassed to 61100-Gain on sale." Mr. Corristan again confirmed—at 8 p.m. on the night the audit was due—that means that the $6 billion was "in one financial statement account [and] should be located in another financial statement account."

82. In fact, after figuring this out, Deloitte only started to analyze this $6 billion just hours before its audit was due:

> Q. "So at 8:23 you've got—9:30, 10:30, 11:00—you got three and a half hours left. And for these two accounts, you had $6 billion you just started analyzing, right?
>
> A. That's what my e-mail says."

83. With sixteen minutes to go, Deloitte asked TBW concerning the $6 billion "Is the net really in the correct place on the P&L? *I can't figure out* what escrows and FHA/VA payable issues that impact the P&L have to do with the gains on sale of loans. Is this one of the transaction types that really needs to be hitting some other account and not 60100?"

84. Despite these glaring open issues as to billions of dollars, Deloitte admitted that regardless all audit work had to be completed by midnight on the date of its opinion. And indeed, sixteen minutes later, Deloitte certified that the consolidated financial statements fairly presented the financial position of TBW and that there was no material misstatement due to error or fraud.

85. This rush to certify in the face of obvious and material accounting issues was a gross dereliction of Deloitte's duty to Ocala and the public.

VIII. Bankruptcy: TBW's Demise

86. Deloitte's gross negligence proximately caused Ocala to lose more than $1.6 billion.

87. As a result of Deloitte's gross negligence, the Looters were able to maintain and grow the fraud. Had the financial statements of TBW not been materially misstated, Ocala would not have suffered its loss.

88. Had Deloitte done its job, Ocala, and Bank of America, trustee and collateral agent for Ocala, would have been able to protect Ocala's assets and prevent the loss Ocala suffered.

89. That there could have been a different result is clear from Deloitte's conduct during the course of its 2009 audit. In that audit, Deloitte finally challenged the Looters on some of their explanations. When Deloitte received incomplete responses and the Looters refused to provide the necessary information, Deloitte determined there was a scope violation under GAAS. As a result, Deloitte finally did at least one step it should have—and could have—done years earlier—refused to complete the 2009 audit and resigned. Yet, Deloitte's gross negligence continued because it still did not reveal the fraud.

90. Indeed, because Deloitte knew Ocala, among others, was a recipient of Deloitte's Independent Audit Opinions, upon Deloitte's resignation Deloitte had a duty to inform Ocala that it could no longer rely on Deloitte's prior audits. In breach of its duty to disclose, Deloitte said nothing. Had Deloitte done so, Ocala and the other recipients would not have continued to rely on the audited financial statements and would not have made decisions in reliance on the accuracy of audited financial statements, including

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Ocala, DB and BNP's decision to renew the Ocala lending facility. Deloitte's decision to stay silent in the face of its duty to correct its prior misrepresentations resulted in additional billions being looted and added to Ocala's losses.

91. On August 3, 2009, federal authorities executed search warrants and TBW's operations were suspended on August 4, 2009.

92. On August 24, 2009, TBW filed for Chapter 11 bankruptcy protection.

93. TBW now owes Ocala more than $1.6 billion.

CAUSES OF ACTION

PROFESSIONAL MALPRACTICE

NEGLIGENT MISREPRESENTATION

94. Ocala repeats and realleges each and every allegation above as if fully set forth herein.

95. Deloitte is the certified public accounting firm that audited the consolidated financial statements of TBW and performed accounting services for TBW. By agreement and as professional accountants, Deloitte's express purpose was to audit the consolidated financial statements for TBW, which included financial information of its subsidiaries, including Ocala, to perform those audits in conformance with GAAS, the professional standards set forth in Deloitte's own audit manuals, and to form and express opinions about whether those consolidated financial statements were presented fairly, in all material respects, in conformity with GAAP. Deloitte specifically committed to "plan and perform [its] audit[s] to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud[.]"

96. Deloitte knew that its work was being relied on by Ocala and a class of persons that included Ocala. Specifically, Deloitte was aware and intended that TBW's financial statements and the Independent Auditors' Reports it provided in connection therewith would be furnished by TBW to Ocala, Ocala's trustee and collateral agent, and Ocala's investors for the purposes of influencing Ocala decisions to finance or to continue financing TBW's mortgage origination operations by issuing the Ocala Notes and by purchasing mortgages from TBW.

97. Consistent with Deloitte's understanding, each of Deloitte's audited financial reports for TBW was provided to Ocala, its trustee and collateral agent and its investors.

98. Ocala, its agents and its investors justifiably relied upon the Deloitte Independent Auditors' Reports so furnished in making its decision whether to finance or continue financing TBW's mortgage origination operations through the issuance of Ocala Notes and the purchase of mortgages from TBW.

99. Because it was aware of those facts and knew that its audits would be furnished to Ocala and its investors, Deloitte owed a duty to Ocala to exercise reasonable care and competence in making the statements set forth in Deloitte's TBW Independent Auditors' Reports.

100. Deloitte breached its duty by making at least the following untrue statements in the Independent Auditors' Reports: (i) TBW's consolidated financial statements presented fairly, in all material respects, the financial position of TBW and its subsidiaries on conformity with GAAP, (ii) Deloitte had a reasonable basis for making the statements contained in its Independent Auditors' Reports, (iii) Deloitte conducted its

audits in accordance with GAAS; and (iv) the financial statements were free of material misstatements.

101. In performing its audits in connection with the consolidated financial statements for TBW, numerous "red flags" were made apparent to Deloitte indicating that TBW's financial misstatements were materially misstated. The presence of these "red flags" reflected a high likelihood that Ocala could face significant injury.

102. Deloitte was either aware of or acted in reckless and conscious disregard of these "red flags." Deloitte deliberately chose not to investigate further, as its duties to act with reasonable care and due diligence required, and as would have revealed the material misstatements in the financial statements and ultimately the fraud being committed by the Looters. Deloitte deliberately chose instead to provide Independent Audit Reports that gave no indication of the "red flags" it had encountered and failed to investigate.

103. Deloitte was either aware of or acted in reckless and conscious disregard of the fact that its decision to provide unqualified opinions concerning the accuracy of the financial statements would lull Ocala into a false sense of security and would facilitate the fraud that the Looters were committing upon it, and thus would create a high likelihood that Ocala in receiving and relying upon Deloitte's Audit Opinions could face significant injury.

104. Deloitte breached its duty to correct its prior misrepresentations by failing to inform Ocala that it could no longer rely on Deloitte's prior audits.

105. Deloitte's conduct thus amounted to a reckless disregard of and indifference to Ocala's rights.

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106. As a direct and proximate result of its reliance upon Deloitte's grossly negligent audits and resulting misrepresentations, Ocala incurred a loss of approximately $ 1.6 billion.

PRAYER FOR RELIEF

WHEREFORE, Ocala respectfully requests judgment against Defendant, under all applicable causes of action, as follows:

1. actual, compensatory and consequential damages in an amount to be proven;
2. rescission or rescissory damages;
3. pre-judgment and post-judgment interest as allowed by law; and
4. such other and further legal and equitable relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: September 26, 2011

Respectfully submitted,

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