

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re  
MILA, INC.,  
dba Mortgage Investment Lending Associates,  
Debtor.  
TIN: 91-1471279

Case No. 07-13059-SJS

GEOFFREY GROSHONG, chapter 11  
trustee for MILA, Inc.,

Adversary Proceeding No.

Plaintiff,

v.

LAYNE E. SAPP and the marital community  
composed of Layne E. Sapp and Cari Sapp;  
NEXT ONLINE MORTGAGE  
TECHNOLOGIES, INC., a Washington  
corporation; LIMA SIERRA LLC, a  
Washington limited liability company;  
DESTINY LEASING LLC, a Washington  
limited liability company; CRS  
FINANCIAL, LLC, a Washington limited  
liability company; CRS FINANCIAL II,  
LLC, a Washington limited liability  
company; and CRS FINANCIAL III, LLC, a  
Washington limited liability company;

COMPLAINT FOR PAYMENT OF  
IMPROPER DIVIDENDS UNDER RCW  
23B.08.310 AND 23B.06.400; BREACH OF  
FIDUCIARY DUTIES; THEFT OF  
CORPORATE OPPORTUNITY; FRAUD;  
TO AVOID AND RECOVER  
FRAUDULENT TRANSFERS; BREACH  
OF CONTRACT; BREACH OF TRUST;  
FOR DECLARATORY RELIEF; TO  
AVOID AND RECOVER PREFERENCES;  
TO DISALLOW CLAIMS; AND FOR  
SETOFF

**JURY DEMAND**

Defendants.

1 Plaintiff, Geoffrey Groshong, solely in his capacity as the chapter 11 trustee for  
2 debtor, MILA, Inc., alleges:

3 **I. PARTIES**

4 1. Geoffrey Groshong is the duly appointed chapter 11 trustee for MILA.

5 2. Layne E. Sapp (“Sapp”) was at all material times MILA’s sole director,  
6 controlling shareholder, and chief executive officer.

7 3. Next Online Mortgage Technologies, Inc. (“Next Online”), is a  
8 Washington corporation owned by Sapp and his spouse and controlled by Sapp.

9 4. Lima Sierra, LLC (“Lima Sierra”) is a Washington limited liability  
10 company wholly owned and controlled by Sapp.

11 5. Destiny Leasing, LLC (“Destiny Leasing”) is a Washington limited  
12 liability company wholly owned and controlled by Sapp.

13 6. CRS Financial, LLC (“CRS”) is a Washington limited liability company  
14 wholly owned and controlled by Sapp.

15 7. CRS Financial II, LLC (“CRS II”) is a Washington limited liability  
16 company owned and controlled by Sapp.

17 8. CRS Financial III, LLC (“CRS III”) is a Washington limited liability  
18 company owned and controlled by Sapp.

19 **II. JURISDICTION AND VENUE**

20 9. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157, 1334, 1367,  
21 2201, and 2202, and GR 7.

22 10. The claims asserted in this complaint arose in this judicial district.  
23 During all relevant times, each defendant did business, committed tortious acts, and breached  
24 fiduciary duties in the Western District of Washington. Accordingly, venue for this action is  
25 proper under 28 U.S.C. §§ 1391 and 1409.  
26

1           11. The first, second, third, fourth, seventh, eighth, ninth and tenth claims for  
2 relief set forth below are non-core matters. The fifth, sixth, eleventh, twelfth, and thirteenth  
3 claims for relief set forth below are core matters. The Trustee does not consent to entry of final  
4 orders or judgment by the bankruptcy judge on the non-core matters.

5  
6                                                           **III. JURY DEMAND**

7           12. The Trustee respectfully demands a trial by jury for all issues in this case  
8 that are triable by a jury. These include, but may not be limited to, the first, second, third, fourth,  
9 seventh, eighth, ninth, and tenth claims for relief.

10           13. The Trustee does not consent to the bankruptcy judge conducting the jury  
11 trial.

12                                                           **IV. FACTS**

13           14. Before filing its voluntary chapter 11 petition on July 2, 2007, MILA was  
14 in the business of funding and then reselling secured residential real estate loans. Principally, it  
15 made subprime loans. Sapp and others formed MILA in about 1984.

16           15. A typical MILA loan transaction would proceed as follows: A mortgage  
17 broker would contact MILA to determine if MILA would make a loan for a residential mortgage.  
18 MILA would determine whether to do so in view of MILA's plans to sell the loan to a  
19 downstream purchaser.

20           16. Usually within 30 days after funding the loan, MILA would sell the loan  
21 to one of several investors. MILA's continued operations depended on the investors' continued  
22 appetite for MILA's loans, as well as MILA's warehouse lenders' willingness to finance the  
23 loans during the initial period MILA held the loans.

24           17. MILA's warehouse lenders loaned directly to MILA based on MILA's  
25 expected inventory of loans and then accepted the completed loans as collateral, in essentially a  
26 flooring arrangement. As long as the warehouse lenders could reasonably be expected to  
continue funding against MILA's expected operations, MILA would not have to put much of its

1 own money at risk but could profit in the transaction from the difference between the rate of  
2 interest at which it borrowed money from its warehouse lenders and the rate at which it was able  
3 to lend the money to subprime borrowers.

4 18. MILA also profited by packaging its loans and selling them for more than  
5 par value.

6 19. To induce downstream purchasers to buy loans from MILA, MILA agreed  
7 to repurchase the loans (and return the purchase price) upon the occurrence of any of several  
8 conditions. Investors usually had up to 90 days to return a loan to MILA and obtain a purchase  
9 price refund, and sometimes had a much longer repurchase period.

10 20. Thus, MILA bore the risk of borrower defaults, especially those occurring  
11 in the first 90 days after loan funding. The more loans MILA made, the greater that risk became.  
12 How MILA accounted for its repurchase obligations is key to understanding MILA's actual  
13 financial position.

#### 14 MILA Was Functionally Insolvent by the End of 2004

15 21. In 2004, MILA calculated after-tax net income of \$17,156,000. However,  
16 MILA overstated that after-tax net income by approximately \$4 million because of its failure to  
17 recognize loan repurchase losses incurred that year.

18 22. MILA paid a \$7,983,000 cash dividend to its shareholders for 2004, which  
19 was 62% of its after-tax net income.

20 23. MILA's overstatement of after-tax net income continued in 2005.  
21 MILA's records reflected 2005 pretax income of \$7,629,000. Adjusted to reflect its true loan  
22 repurchase losses, MILA actually suffered a loss of \$1,354,728 in 2005.

23 24. Despite actually suffering a loss in 2005, MILA paid its shareholders cash  
24 dividends of \$3,248,000 for 2005.

25 25. Although MILA originated almost \$3 billion of loans in 2004, its net cash  
26 flow that year was only \$5.3 million after paying its shareholders \$7,983,000 in dividends. Also,

1 MILA was completely dependent on financing that could be reduced or withdrawn on demand,  
2 leaving MILA exposed to funding its operations from cash on hand, which was sufficient only to  
3 cover operating costs for three to four months, an inadequate time for a distressed company to  
4 find replacement financing.

5           26. Despite MILA's 2004 loan volume growth, by the end of that year its two  
6 critical operating performance measures – revenue as a percentage of loan sales (“RPLS”) and  
7 repurchased loans as a percentage of loan sales – were worsening at an accelerating rate.

8           27. RPLS represents MILA's gross margin. MILA's RPLS was 3.2% in 2002  
9 and 2.89% in 2003. By the end of 2004, RPLS had declined to 2.5%, and even MILA's overly  
10 optimistic 2004 forecasts predicted that those margins would continue to shrink to 2.21% in 2005  
11 and 1.95% in 2006. MILA's actual RPLS in 2005 was 1.96%.

12           28. MILA repurchased loans of \$2,718,671 in 2002, \$8,260,655 in 2003, and  
13 \$37,660,332 in 2004. Those repurchased loans represented 0.53% of total loan sales in 2002,  
14 0.58% of total loan sales in 2003, and 1.27% of total loan sales in 2004. MILA projected that its  
15 loan repurchases as a percentage of total loan sales would triple in 2005 through 2007.

16           29. Thus, despite MILA's 2004 record loan volume, its actual profitability  
17 was declining. Therefore, to survive financially it needed a dramatic increase in available cash  
18 on hand and profitability and a means of reversing the alarming growth in bad loans it was  
19 required to repurchase. Also, by 2004, more lenders competed with MILA to make “Alt-A” and  
20 subprime loans, resulting in reduced margins and the likelihood that MILA could continue to  
21 increase its loan production volume. By the end of 2004, MILA had unreasonably small capital  
22 in light of its future anticipated expenses and growth.

23           30. By March 2005, MILA was already delaying payments, even to important  
24 customers, to conserve cash.

25           31. In mid-2005, MILA hired Deutsche Bank Securities, Inc. to prepare a  
26 private placement memorandum which tried to suggest that MILA was actually a technology

1 company, instead of a subprime lender. At about that time, MILA began describing itself as an  
2 “e-commerce mortgage solution provider” with “proprietary, cutting-edge technology.” As  
3 explained below, Sapp had surreptitiously seized MILA’s valuable technology to use with  
4 another of his wholly owned companies, Next Online, which still is trying to profit from  
5 intellectual property that belongs to MILA.

6 32. Sapp held out MILA as a technology company rather than as a subprime  
7 lender in the summer of 2005. That was when the trade press, including the Wall Street Journal,  
8 began running articles suggesting that the bottom was about to fall out of the subprime loan  
9 market.

10 33. MILA’s efforts to raise money by holding itself out as a technology  
11 company were unsuccessful. Despite investors’ lack of interest in funding MILA in the fall of  
12 2005, Sapp caused MILA to pay him that year a salary of \$11,540,960 for 2005 and to pay the  
13 shareholders a cash dividend exceeding \$3 million, in addition to the cash Sapp received through  
14 related-party transactions described below, all at the expense of MILA and its creditors.

15 34. MILA became insolvent by no later than December 31, 2004. By that  
16 time, if not before, it was obvious to Sapp that MILA would not succeed in its business of  
17 funding and then reselling subprime secured residential real estate loans. To protect the rights of  
18 the creditors of MILA, Sapp should have attempted to sell, liquidate, or reorganize MILA at a  
19 time when it still had significant value, instead of continuing to manipulate and loot it for  
20 personal gain for more than another two years, as described in more detail below.

### 21 MILA’s Related-Party Transactions

22 35. As the CEO, sole director, and controlling shareholder of MILA, Sapp  
23 caused MILA to enter into several transactions with other companies he owned and controlled.  
24 None of these transactions was approved by any disinterested directors of MILA or by  
25 disinterested shareholders of MILA. None of these transactions was fair to MILA.  
26

1 Next Online

2 36. Starting in as early as 1995, MILA spent over \$2 million to develop  
3 specialized mortgage origination software. MILA's automation of its loan origination and  
4 underwriting helped to fuel the growth of its business. Two of the central software products  
5 MILA developed were called AccessPoint and Next. They were designed to work together.

6 37. AccessPoint was MILA's proprietary, Web-based interactive loan  
7 production management system. MILA developed AccessPoint to streamline the entire loan  
8 application process by allowing for online application, automated underwriting, and the  
9 generation of a loan commitment within minutes. AccessPoint also acted as a personal  
10 automated assistant to allow a loan broker to manage the broker's loan pipeline, receive up-to-  
11 the-minute details on all loan conditions, contact MILA underwriters, and get quick access to all  
12 documentation tied to a loan.

13 38. The Next software was MILA's mortgage processing and loan  
14 management system, which served as the back-end processor for loan applications that brokers  
15 submitted through AccessPoint. MILA employees would log into Next to perform loan  
16 processing functions, including evaluating borrower income, pulling credit reports, handling  
17 fraud reports, entering conditions, and reviewing property values.

18 39. MILA spent approximately \$1,346,000 developing the Next software and  
19 approximately \$867,000 developing the AccessPoint software. MILA substantially completed  
20 development of these products by the end of 2001. The software MILA developed, and all  
21 works derived from that software or later iterations, are all works-made-for-hire that belong  
22 exclusively to MILA.

23 40. On or about October 4, 2001, Sapp incorporated Next Online. The trustee  
24 believes Sapp and Cari Sapp, Sapp's wife, are the sole shareholders in Next Online. Next Online  
25 is currently marketing and using works derived from MILA-generated software and technology.  
26

1           41.     Next Online occupied space in MILA's building in Mountlake Terrace,  
2 Washington (the "MILA Financial Center") rent-free until at least October 2004. MILA actually  
3 leased additional space for Next Online from January 1 through October 19, 2004, and paid for  
4 the benefit of Next Online an additional monthly rental charge of \$15,415 per month during that  
5 period. Next Online never reimbursed MILA for that increased rental charge or for Next  
6 Online's previous rental of MILA's space.

7           42.     On or about March 26, 2002, Next Online registered with the United  
8 States Copyright Office a work entitled "Next Online Mortgage Software." Upon information  
9 and belief, that work is the same software MILA developed. There is no record of any  
10 assignment of MILA's software to Next Online, nor is there any record of Next Online paying  
11 MILA anything to obtain any exclusive rights to MILA's software. The copyright registration,  
12 which lists Next Online rather than MILA as the owner and author of the software, is false and  
13 fraudulent. Shortly before MILA entered bankruptcy, Sapp acknowledged that MILA'S  
14 intellectual property had a value of \$5 million.

15           43.     Sapp confirmed the absence of any assignment or transfer of the software  
16 and the falsity of the Next Online registration in a September 8, 2003, e-mail to MILA outside  
17 counsel Douglas Prince of the Foster Pepper law firm:

18           "Doug ...other than the monthly billing invoices the remaining agreements  
19 [between Next Online and MILA regarding the software] have all been verbal and  
20 not signed. As you remember, everyone was afraid to execute any agreements  
21 due to potential tax ramifications as well as the unknown on how the agreements  
22 would affect the raising of private capital."

23           44.     Sapp instructed MILA to pay Next Online's invoices, even though there  
24 was no written agreement between the companies regarding any assignment or licensing of the  
25 software or any agreement on the price or value of the services Next Online was to provide.  
26 MILA made payments to Next Online in 2002 and 2003 even before there was a written  
agreement purportedly obligating it to do so.



1           45.     On September 8, 2003, MILA’s chief financial officer, William  
2 Dougherty, wrote to Sapp as follows, confirming that MILA, not Next Online, owned the  
3 software:

4           “Re. point 6, ‘Next owns the software platform and provides MILA a license to  
5 use the software . . .’ ‘ recall we discussed that MILA has \$1.38 mm on our Bal  
6 Sheet in capitalized software costs. I understood this to mean that MILA owns  
7 the software, and gives NEXT the right to license it to other potential customers.  
8 If we want NEXT to own this software, then I can only think of a few ways to get  
9 it out of MILA to NEXT, none pretty: – Sale, in which case NEXT has to pay us  
10 a bundle (or MILA has to write off a bundle), – some type of a contribution in  
11 exchange for equity, in which case MILA itself owns part of NEXT (not the best),  
– a third party intermediary sale (e.g., to you, who then resells it to NEXT in  
exchange for a note or for cash or book it as a new equity infusion) – complicated,  
plus I don’t know how this would affect your personal position. Finally, Ron  
Kent suggests we ask Doug [Prince] that he provide assurance that whatever  
structure we finally arrive at will provide us with protection from the new FIN-46,  
which could potentially require MILA to consolidate NEXT onto our financial  
statements unless properly separated.”

12           46.     On or about November 11, 2004, Sapp caused MILA to enter into a  
13 Software Development and Consulting Agreement with Next Online. That agreement confirms  
14 that AccessPoint, Next, and other related software belongs to MILA.

15           47.     On or about January 17, 2006, Next Online announced the launch of an  
16 updated version of its Next, DecisionPoint, and AccessPoint Software called “Credex.” Credex  
17 was simply a newer version of that older MILA software, which provided an online software tool  
18 to streamline the application process for consumers seeking a home loan, as well as a lead  
19 management tool, which helped real estate agents and mortgage brokers to stay on top of the  
20 progress each customer makes through the home buying and lending process.

21           48.     Next Online continues to use and promote the Credex software but has no  
22 right to so, just as it had no right to do so with Next, DecisionPoint or AccessPoint.

23           49.     In February 2006, Sapp caused MILA to enter into another Software  
24 Development and Consulting Agreement to increase the monthly fees MILA would pay to Next  
25 Online to \$600,000. Six months later, in September 2006, Sapp reduced the monthly fees that  
26

1 would be paid to \$550,000, and four months later in January 2007 he reduced them again to  
2 \$350,000.

3 50. Despite having available the services of Next Online, MILA continued to  
4 employ telecommunications, information technology help desk, and business analysis and report  
5 specialists of its own, whose functions were largely redundant to those performed by Next  
6 Online.

7 51. In entering into contracts with Next Online, MILA did not consider any  
8 providers other than Next Online.

9 52. Next Online arbitrarily set the rates it charged MILA to justify the bills  
10 Sapp decided Next Online should charge MILA. For example, in an email dated January 14,  
11 2005, from Sapp to Luke Adamson, Next Online's chief technology officer, Sapp ordered as  
12 follows:

13 "Luke just create a bill for \$350k. How you get to the number is not that  
14 important for we can adjust going forward during one of our meetings this month.  
Layne"

15 Sapp also sent a copy of that e-mail to MILA's accounting manager, Jameson Park, with  
16 instructions to "just to make the check payable for \$350k which is the monthly budget going  
17 forward."

18 53. Further evidence of the arbitrary nature of the fees Next Online charged to  
19 MILA appears in a March 2005 email exchange between Sapp and Dougherty. In that exchange,  
20 Dougherty questioned the propriety of increased fees Next Online charged to MILA because the  
21 fees drained money from MILA when it needed cash. Sapp assured Dougherty that the increases  
22 were correct because Sapp "was a party to this change and will control the rate of increase."

23 54. Businesses outsource business and technology functions to gain access to  
24 a specialized service or to reduce the cost of providing the function by taking advantage of an  
25 outside provider's scale and efficiency. Neither reason justified MILA's outsourcing of software  
26 services to Next Online. Next Online's staffing roster in 2005 included 14 professionals and

1 Sapp. In 2005, the average annual base compensation rate for the 14 professional Next Online  
2 employees was \$84,143, which equates to approximately \$40.45 per hour. But Next Online  
3 charged MILA an hourly consulting rate for those employees of \$125. In short, even after  
4 accounting for any overhead or employer-related payroll contributions, Next Online charged  
5 MILA substantially more than what MILA would have paid if it had employed those same  
6 persons. Next Online paid Sapp a base salary of \$240,000 per year. Yet, as the sole director of  
7 MILA, Sapp approved of his own exorbitant salary from MILA for, among other things, serving  
8 as MILA's chief technology official and MILA's main architect and driver of Next and  
9 AccessPoint. Upon information and belief, MILA was Next Online's only customer at the time.

10 55. From 2003 through 2007, MILA paid the following amounts to Next  
11 Online:

|       |              |
|-------|--------------|
| 2003  | \$1,776,000  |
| 2004  | \$3,361,000  |
| 2005  | \$6,585,000  |
| 2006  | \$7,039,000  |
| 2007  | \$1,310,000  |
| TOTAL | \$20,071,000 |

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19 56. From January 2004 through June 2007, MILA paid Next Online  
20 \$18,295,000 in salaries and bonuses that, using a loading factor of 14% for benefits and payroll  
21 taxes, would have cost MILA only \$7,667,580 for those same persons had they been MILA  
22 employees. Thus, MILA overpaid Next Online \$10,627,420.

23 **Lima Sierra**

24 57. On information and belief, Sapp is the sole or controlling owner of Lima  
25 Sierra. The words "Lima" and "Sierra" represent the names in the international radio operators  
26 alphabet, also used by aircraft pilots, for the letters "L" and "S," Sapp's initials.

1           58.     From 2004 through 2006, MILA leased several aircraft, including a  
2     Cessna Citation III and a Canadair Challenger 601, from Lima Sierra. MILA paid Lima Sierra  
3     lease payments of \$60,344 in 2004, \$768,767 in 2005, and \$735,926 in 2006. Those payments  
4     only guaranteed the availability of the aircraft. In addition to the lease payments, MILA also  
5     paid Lima Sierra management fees, insurance costs, sales taxes, and actual flight operation  
6     expenses for fuel and pilots for the flights actually taken. These payments included payments to  
7     Skycorp, the aircraft management vendor used by Lima Sierra.

8           59.     Between March 2005 through September 2006, MILA booked  
9     approximately 42 trips of varying distances and durations. MILA's costs for these trips averaged  
10    approximately \$10,000 per passenger. By way of comparison, during this same timeframe a  
11    first-class round trip ticket from Seattle to New York would have cost approximately \$1,200 per  
12    passenger.

13          60.     MILA's expenditures for executive travel, including the aircraft lease,  
14    totaled \$1,867,018 in 2005 and approximately \$1,350,216 in 2006. Approximately 88 percent of  
15    those costs were lease payments and related expenses for private jet service Lima Sierra provided  
16    to MILA.

17          61.     MILA had no legitimate business purpose for leasing private jets, and its  
18    payments to Lima Sierra drained cash from MILA when MILA could least afford the significant  
19    cash outflow.

#### 20                                         Destiny Leasing

21          62.     On information and belief, Sapp is the sole or controlling owner of  
22    Destiny Leasing. Destiny Leasing acted as a holding company for Sapp's 130-foot Westport  
23    yacht, *Infinity*. The Trustee believes Destiny Leasing or Sapp still own the yacht.

24          63.     From May 1, 2004, through August 3, 2005, Destiny Leasing invoiced  
25    MILA \$395,374 for monthly lease, sales tax, and operating expenses for the yacht.

26

1            64. During that time, MILA used that yacht only twice for asserted business  
2 reasons—any other use involved Sapp for a personal benefit that he did not pay for.

### 3                                            CRS and CRS III

4            65. Sapp and Cari Sapp are the sole members of CRS. Sapp controls CRS.  
5 CRS leased office space in the MILA Financial Center to MILA under a lease dated  
6 December 18, 2002. As discussed above, MILA leased additional space from CRS to house  
7 Next Online from January 1, 2004, through October 19, 2004, for a monthly rental of \$15,415.  
8 Essentially, MILA paid that lease and Next Online received free tenancy.

9            66. On about March 29, 2004, Sapp formed CRS III to purchase an unpaved  
10 and unimproved parking lot adjacent to the MILA Financial Center. Market rate rents for  
11 parking on that property would have been, at most, approximately \$25 per car per month. At  
12 most, MILA would have parked 100 to 150 cars on that property. On information and belief,  
13 that degree of use by MILA never was reached. Nevertheless, Sapp caused MILA to lease the  
14 parking lot from CRS III for approximately \$30,000 per month for an extended period rather  
15 than on a month-to-month basis.

16            67. The amounts that Sapp caused CRS and CRS III to extract from MILA  
17 were excessive and caused MILA damages in amounts to be proved at trial.

## 18                                            V. CLAIMS FOR RELIEF

### 19                                            **FIRST CLAIM FOR RELIEF:** 20                                            **(Under RCW 23B.08.310 for Violation of RCW 23B.06.400 in Payment of Dividends** 21                                            **against Sapp only)**

22            68. The Trustee realleges paragraphs 1, 2, 9 through 13, and 14 through 34.

23            69. In his capacity as director of MILA, Sapp caused MILA to make  
24 distributions to shareholders in violation of RCW 23B.06.400 because MILA was not able to pay  
25 its liabilities as they became due in the usual course of business.

26            70. Pursuant to RCW 23B.08.310, Sapp is personally liable to MILA for the  
amount of dividends and any other distributions that exceed what could have been distributed

1 without violating RCW 23B.06.400 or the articles of incorporation of MILA. The amount of  
2 such dividends that are damages are:

3 (a) \$7,983,000 for dividends declared during 2004. Because  
4 Sapp owned approximately ninety percent of the shares of MILA, he received the  
5 largest amounts of such dividends by far; specifically, the Trustee is informed and  
6 believes that Sapp caused MILA to pay himself dividends in 2004 as follows:  
7 \$700,350 in April 2004, \$1,400,700 in May 2004, \$502,425 in July 2004,  
8 \$828,240 in August 2004, and \$2,682,130 in November 2004.

9 (b) \$3,248,000 for dividends declared during 2005. Because  
10 Sapp owned approximately ninety percent of the shares in MILA, he received the  
11 largest amounts of such dividends by far; specifically, the Trustee is informed and  
12 believes that Sapp caused MILA to pay himself dividends in 2005 as follows:  
13 \$268,213 in February 2005, \$268,213 in March 2005, \$313,025 in June 2005,  
14 \$313,025 in July 2005, \$313,025 in August 2005, \$313,025 in September 2005,  
15 \$313,025 in October 2005, and \$313,025 in December 2005.

16 **SECOND CLAIM FOR RELIEF:**  
17 **(Breach of Fiduciary Duty against Sapp Only)**

18 **Count One – Conflicts of Interest**

19 71. The Trustee realleges paragraphs 1 through 67.

20 72. As a director, controlling shareholder, and officer of MILA, Sapp owed  
21 fiduciary duties to MILA and its creditors, including one or more of the following:

22 (a) To place the interests of MILA ahead of his personal  
23 interests and refrain from engaging in any self dealing transactions that were not  
24 both entirely fair and fully disclosed.

25 (b) Because MILA was in the zone of insolvency even before it  
26 became insolvent by no later than December 31, 2004, Sapp owed duties of the

1 type described in *Revlon, Inc. v MacAndrews and Forbes Holding, Inc.*, 506 A2d  
2 1110 (Del 1986) and its progeny. In other words, because of MILA's rapid  
3 financial deterioration, Sapp had the duty to emphasize short term enhancement of  
4 value for MILA, its creditors, and those who formed the community of interest in  
5 MILA so that MILA could be sold for the highest possible price, because there  
6 was no basis for pursuing any long term strategy. Sapp failed to fulfill these  
7 obligations in the transactions, conduct, and omissions described in this  
8 complaint.

9 73. MILA is entitled to damages in an amount to be proved at trial and  
10 disgorgement of all payments made by MILA to Sapp and the entities controlled by him.

11 **Count Two – Gross Negligence**

12 74. The Trustee realleges paragraphs 1 through 67.

13 75. As a director and officer of MILA, Sapp owed MILA the fiduciary  
14 obligation to avoid gross negligence in transactions that were not self dealing transactions. He  
15 failed to do so in the transactions, conduct and omissions described in this complaint.

16 **Count Three – Failure to Exercise Business Judgment**

17 76. The Trustee realleges paragraphs 1 through 67.

18 77. As a director and officer of MILA, Sapp owed MILA the fiduciary  
19 obligation to exercise business judgment in transactions that were not self dealing transactions.  
20 He failed to do so in the transactions, conduct, and omissions described in this complaint.

21 **THIRD CLAIM FOR RELIEF:**  
22 **(Theft of Corporate Opportunities against Sapp, Next Online, CRS, and CRS III)**

23 78. The Trustee realleges paragraphs 1 through 67.

24 79. MILA, which actually developed and first used the Web-based broker  
25 interface and other software currently being used by Next Online, could have and should have  
26 been allowed to commercialize and profit from that technology and intellectual property and

1 would have pursued those opportunities but for Sapp's interference, lack of disclosure, and  
2 breach of fiduciary duty. Instead, Sapp formed Next Online to pursue that MILA corporate  
3 opportunity, while representing to others (including potential investors) that MILA indeed owned  
4 the intellectual property and would be pursuing those opportunities to commercialize and profit  
5 from those technologies.

6 80. MILA – a company that was actually in the business of funding real estate  
7 loans – could have and should have been allowed to buy the MILA Financial Center and would  
8 have pursued that opportunity but for Sapp's interference, lack of disclosure, and breach of  
9 fiduciary duty. Had Sapp fairly presented that opportunity to MILA and allowed MILA to buy  
10 the MILA Financial Center, MILA would have lowered its occupancy expenses and obtained  
11 valuable hard assets.

12 81. Similarly, MILA could have and should have purchased the adjacent  
13 parking lot that was ultimately purchased by CRS III. But for Sapp's interference, lack of  
14 disclosure and breach of fiduciary duty, MILA would have pursued that opportunity, and would  
15 have lowered its parking expenses significantly, and gained yet another valuable asset.

16 82. These thefts of corporate opportunity damaged MILA in amounts the  
17 Trustee will prove at trial.

18 **FOURTH CLAIM FOR RELIEF:**  
19 **(Common Law Fraud against Sapp Only)**

20 83. The Trustee realleges paragraphs 1 through 67.

21 84. Through its audited financial statements and otherwise, Sapp made the  
22 following representations of fact to MILA and its creditors:

- 23 (a) that MILA was continuing to remain profitable;
- 24 (b) that MILA had become primarily an information  
25 technology firm rather than remaining bound to lenders and bulk loan purchasers  
26



1 because its true primary function was that of a subprime mortgage lender/re-  
2 reseller;

3 (c) that MILA should be viewed as a going concern; i.e., that  
4 there was no substantial doubt about the ability of MILA to continue as a going  
5 concern.

6 (d) that MILA's transactions with Next Online were entirely  
7 fair to MILA and fully disclosed to MILA and its creditors;

8 (e) that MILA's transactions with CRS and CRS III were  
9 entirely fair to MILA and fully disclosed to MILA and its creditors;

10 (f) that MILA's transactions with Lima Sierra were fully  
11 disclosed and entirely fair to MILA and its creditors;

12 (g) that MILA's transactions with Destiny Leasing were fully  
13 disclosed and entirely fair to MILA and its creditors.

14 85. These representations were material.

15 86. These representations were false because:

16 (a) MILA ceased being solvent by no later than December 31,  
17 2004;

18 (b) There was substantial doubt about the ability of MILA to  
19 continue as a going concern;

20 (c) MILA remained primarily a subprime mortgage lender/re-  
21 seller so its financial fate was tied to ever increasing repurchase obligations, and  
22 its information technology component had not changed in any way that would  
23 affect its financial exposure because of these repurchase obligations;

24 (d) MILA's transactions with Next Online were self-dealing  
25 transactions used to extract excessive amounts from MILA for the benefit of Sapp  
26 and were not fully disclosed.

1 (e) MILA's transactions with CRS and CRS III were self-  
2 dealing transactions used to extract excessive amounts from MILA for the benefit  
3 of Sapp and were not fully disclosed.

4 (f) MILA's transactions with Lima Sierra were self-dealing  
5 transactions used to extract excessive amounts from MILA for the benefit of Sapp  
6 and were not fully disclosed.

7 (g) MILA's transactions with Destiny Leasing were self-  
8 dealing transactions used to extract excessive amounts from MILA for the benefit  
9 of Sapp and were not fully disclosed.

10 87. Sapp knew these representations were false but made them with the intent  
11 that MILA and its creditors act upon them.

12 88. MILA and its creditors were ignorant of the falsity of the representations,  
13 and relied on them, as it had the right to do.

14 89. MILA is entitled to damages in an amount to be proven at trial.

15 **FIFTH CLAIM FOR RELIEF:**  
16 **(Fraudulent Transfer Under 11 U.S.C. § 548)**  
17 **(Against all defendants)**

18 **Count One**

19 90. The Trustee realleges paragraphs 1 through 11, 13, and 14 through 67.

20 91. Defendants received property of MILA, as described above.

21 92. MILA made the payments with the actual intent to hinder, delay, or  
22 defraud its creditors or others (11 U.S.C. § 548(a)(1)(A)).

23 93. Defendants did not take for value or in good faith.

24 94. The Trustee is entitled to avoidance of the above transactions, and to  
25 recover those amounts with interest under 11 USC § 550(a).

26 **Count Two**

95. The Trustee realleges paragraphs 1 through 11, 13, and 14 through 67.

1 96. Defendants received property of MILA, as described above.

2 97. Further, MILA received less than reasonably equivalent value in exchange  
3 for the transfers (11 U.S.C. § 548(a)(1)(B)(i)), and

4 98. MILA was insolvent on the date the transfers were made, or became  
5 insolvent as a result of those transfers (11 U.S.C. § 548(a)(1)(B)(ii)(I)), or

6 99. MILA was also engaged in a business or transaction, or was about to so  
7 engage, for which any property remaining with MILA was unreasonably small capital (11 U.S.C.  
8 § 548(a)(1)(B)(ii)(II)), or

9 100. MILA intentionally incurred, or believed it would incur, debts that were  
10 beyond the Debtor's ability to pay as such debts matured (11 U.S.C. § 548(a)(1)(B)(ii)(III)).

11 **SIXTH CLAIM FOR RELIEF:**  
12 **(Fraudulent Transfer Pursuant to RCW Ch. 19.40 and 11 USC §544(b))**  
13 **(Against all defendants)**

14 101. The Trustee realleges paragraphs 1 through 11, 13, and 14 through 67.

15 102. Defendants received property of MILA, as described above.

16 103. MILA made the payments with the actual intent to hinder, delay, or  
17 defraud its creditors or others.

18 104. Additionally, MILA received less than reasonably equivalent value in  
19 exchange for the transfers, and was engaged or was about to engage in business or transactions  
20 for which the remaining assets of MILA were unreasonably small in relation to those businesses  
21 or transactions.

22 105. The payments to Defendants also caused MILA to incur, or MILA  
23 believed or reasonably should have believed that it would incur, debts that were beyond the  
24 Debtor's ability to pay as such debts matured.

25 106. Further, MILA did not receive reasonably equivalent value for the  
26 payments to Defendants, and either was insolvent at the time MILA made the payments, or  
became insolvent as a result of those transfers.

1           107. The above described transactions were fraudulent conveyances pursuant to  
2 RCW Ch. 19.40. The Trustee is entitled to avoidance of the above transactions, and to recover  
3 those amounts with interest, under 11 USC § 544(b) and 11 USC § 550(a).

4                                   **SEVENTH CLAIM FOR RELIEF:**  
5                                   **(Breach of Contract—Against Sapp only)**

6           108. The Trustee realleges paragraphs 1 through 3, 9 through 20, and  
7 35 through 56.

8           109. On or about May 16, 2007, for valuable consideration, MILA and Sapp  
9 entered into a written “Consultant Intellectual Property Agreement” (“the Consultant  
10 Agreement”). A copy of the Consultant Agreement is attached hereto as Exhibit 1 and  
11 incorporated by reference.

12           110. Pursuant to the terms of the Consultant Agreement, Sapp agreed, *inter*  
13 *alia*, to keep certain information confidential, including but not limited to information preceding  
14 and during the course of his engagement under the Consultant Agreement. Moreover, under the  
15 terms of the Consultant Agreement, Sapp promised that he would hold in trust for MILA’s sole  
16 benefit such information, return to MILA all documents and property in his care, custody, or  
17 control relating to his engagement or MILA’s business, and refrain from competition with MILA  
18 during the course of his engagement and for twelve months after the end of the engagement. In  
19 addition, paragraph 13 of the Consultant Agreement provides, in pertinent part: “If I breach this  
20 agreement it will cause MILA irreparable harm. If I breach this agreement, I will hold in trust  
21 for MILA all income I receive as a result of the violation.”

22           111. Sapp has breached the Consultant Agreement by one or more of the  
23 following:

24                           (a) Providing information made confidential under the  
25 Consultant Agreement to Next Online.  
26

1 (b) Using that confidential information to compete against  
2 MILA.

3 (c) Obtaining engagements that compete or relate to MILA's  
4 products without first obtaining independent written permission from MILA in  
5 violation of paragraph 6 of the Consultant Agreement.

6 (d) Competing against MILA in violation of paragraph 7 of  
7 the Consultant Agreement.

8 (e) Undertaking work for himself or others during or within  
9 twelve months after the end of his engagement that involved subject matter  
10 related to MILA's activities without fully disclosing them to MILA, in violation  
11 of paragraph 8 of the Consultant Agreement.

12 112. As a foreseeable consequence of Sapp's breach of the Consultant  
13 Agreement, MILA has been damaged in an amount to be proved at trial, but no less than  
14 \$5,000,000, in addition to whatever prejudgment or other equitable relief the court determines to  
15 be proper, including but not limited to prejudgment attachment under RCW 6.25.030.

16 113. Pursuant to paragraph 13 of the Consultant Agreement, the Trustee is  
17 entitled to recover reasonable costs and attorney fees upon prevailing in this action, including  
18 without limitation reasonable costs and attorney fees for any tort or statutory violation relating to  
19 Sapp's engagement at any time with MILA.

20 **EIGHTH CLAIM FOR RELIEF:**  
21 **(Breach of Trust—Against Sapp only)**

22 114. The Trustee realleges paragraphs 1 through 3, 9 through 20, and 35  
23 through 56.

24 115. By virtue of the Consultant Agreement, Sapp incurred the obligations of a  
25 trustee owing duties to MILA as the beneficiary, and all sums obtained by Sapp in violation of  
26

1 the Consultant Agreement, and all proceeds of those sums, are held by Sapp in trust for the  
2 benefit of MILA.

3 116. Sapp breached his duties as trustee because of his breaches of the  
4 Consultant Agreement. MILA has been damaged in an amount to be proved at trial in addition to  
5 whatever prejudgment or other equitable relief the court determines to be proper.

6 **NINTH CLAIM FOR RELIEF:**  
7 **(Declaratory Judgment – Against Next Online only)**

8 117. The Trustee realleges paragraphs 1 through 3, 9 through 20, and 35  
9 through 56.

10 118. Defendant Next Online has falsely registered and claimed authorship of a  
11 work with the United States Copyright Office, which MILA authored and owns.

12 119. Defendant Next Online also used and continues to use software and other  
13 works that MILA authored and owns and does so without license or permission.

14 120. Pursuant to 28 U.S.C. § 2201, the Trustee seeks a declaration that MILA  
15 owns all intellectual property in Next Online's possession that in any way derives from the  
16 software developed and owned by MILA, that the 2002 copyright registration was false in its  
17 claim that Next Online was the author as opposed to MILA, that the Trustee may reject all  
18 remaining executory licenses or agreements with Next Online pursuant to 11 U.S.C. § 365(n)  
19 without penalty, that Next Online has failed to perform under the licenses, and such other  
20 necessary declarations as evidence at trial warrants.

21 **TENTH CLAIM FOR RELIEF:**  
22 **(Breach of Contract– Against Next Online only)**

23 121. The Trustee realleges paragraphs 1 through 3, 9 through 20, and  
24 35 through 56.

1           122. On or about November 11, 2004, for valuable consideration, MILA  
2 entered into a written Software Development and Consulting Services Agreement with Next  
3 Online.

4           123. Pursuant to that contract, the parties agreed that the “MILA Software”  
5 included all software identified on Exhibit A to that contract. Exhibit A to that contract includes  
6 the Next, AccessPoint and other software.

7           124. Pursuant to paragraph 10 of that contract, Next Online acknowledged and  
8 agreed that “the MILA Software is for MILA’s sole and exclusive use and MILA shall be  
9 deemed to be the sole and exclusive owner of all right, title and interest thereto, including all  
10 intellectual property and proprietary rights” and that all services to be provided to MILA by Next  
11 Online (defined in the contract as “Next Services”) were owned by and for the benefit of and the  
12 property of MILA.

13           125. Next Online has breached the Software Development and Consulting  
14 Services Agreement by one or more of the following: (a) asserting that the MILA Software and  
15 the Next Services belong to Next Online instead of MILA; (b) marketing the MILA Software  
16 and Next Services to others and retaining the proceeds therefrom.

17           126. MILA is entitled to damages in an amount to be proven at trial.

18                           **ELEVENTH CLAIM FOR RELIEF:**  
19                           **(Preference Under 11 U.S.C. § 547)**  
20                           **(Against Sapp, Next Online, CRS II, and Lima Sierra)**

21           127. The Trustee realleges paragraphs 1 through 11, 14 through 61, and  
22 65 through 67.

23           128. On or within one year before the MILA filed its chapter 11 case, MILA  
24 transferred an interest in property by making payments to or for the benefit of Sapp in the total  
25 amount of \$51,040 (the “Sapp Transfers”). Specifically, the Sapp Transfers are:  
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| <b>Date of Transfer</b> | <b>Amount Transferred</b> |
|-------------------------|---------------------------|
| 5/31/07                 | \$25,520                  |
| 6/15/07                 | \$25,520                  |

129. Sapp was an insider at the time of the Sapp Transfers.

130. The Sapp Transfers were made to or for the benefit of Sapp as a creditor on account of an antecedent debt owed by MILA to Sapp before such transfers were made.

131. On or within the one year before MILA filed its chapter 11 case, MILA transferred an interest in property by making payments to or for the benefit of Next Online in the total amount of \$4,260,000 (the "Next Online Transfers"). Specifically, the Next Online Transfers are:

| <b>Date of Transfer</b> | <b>Amount Transferred</b> |
|-------------------------|---------------------------|
| 8/10/06                 | \$600,000                 |
| 9/11/06                 | \$600,000                 |
| 10/19/06                | \$650,000                 |
| 11/19/06                | \$550,000                 |
| 12/11/06                | \$550,000                 |
| 1/10/07                 | \$350,000                 |
| 2/12/07                 | \$350,000                 |
| 3/12/07                 | \$350,000                 |
| 4/27/07                 | \$260,000                 |

132. Next Online was an insider at the time of the Next Online Transfers.



1           133. The Next Online Transfers were made to or for the benefit of Next Online  
2 as a creditor on account of an antecedent debt owed by MILA to Next Online before such  
3 transfers were made.

4           134. On or within the one year before MILA filed its chapter 11 case, MILA  
5 transferred an interest in property by making payments to or for the benefit of CRS II in the total  
6 amount of \$347,314.52 (the "CRS II Transfers"). Specifically, the CRS II Transfers are:

| <b>Date of Transfer</b> | <b>Amount Transferred</b> |
|-------------------------|---------------------------|
| 7/13/06                 | \$169.36                  |
| 8/1/06                  | \$173,572.58              |
| 9/1/06                  | \$173,572.58              |

13           135. CRS II was an insider at the time of the CRS II Transfers.

14           136. The CRS II Transfers were made to or for the benefit of CRS II as a  
15 creditor on account of an antecedent debt owed by MILA to CRS II before such transfers were  
16 made.

17           137. On or within the one year before MILA filed its chapter 11 case, MILA  
18 transferred an interest in property by making payments to or for the benefit of Lima Sierra in the  
19 total amount of \$86,788.85 (the "Lima Sierra Transfers"). Specifically, the Lima Sierra  
20 Transfers are:

| <b>Date of Transfer</b> | <b>Amount Transferred</b> |
|-------------------------|---------------------------|
| 8/18/06                 | \$3,846.13                |
| 9/1/06                  | \$80,000                  |
| 10/16/06                | \$2942.72                 |

1           138. Lima Sierra was an insider at the time of the Lima Sierra Transfers.

2           139. The Lima Sierra Transfers were made to or for the benefit of Lima Sierra  
3 as a creditor on account of an antecedent debt owed by MILA to Lima Sierra before such  
4 transfers were made.

5           140. The Sapp Transfers, Next Online Transfers, CRS II Transfers, and Lima  
6 Sierra Transfers were made while MILA was insolvent.

7           141. The Sapp Transfers, Next Online Transfers, CRS II Transfers, and Lima  
8 Sierra Transfers enabled Sapp, Next Online, CRS II, and Lima Sierra each to receive more than  
9 they would have received if: (a) the case were a case under Chapter 7 of the Code; (b) the Sapp  
10 Transfers, Next Online Transfers, CRS II Transfers, and Lima Sierra Transfers had not been  
11 made to each of them; and (c) each of them had received payment of such debt to the extent  
12 provided by the provisions of the Code.

13           142. The Sapp Transfers, Next Online Transfers, CRS II Transfers, and Lima  
14 Sierra Transfers are avoidable pursuant to 11 U.S.C. § 547.

15           143. The Sapp Transfers, Next Online Transfers, CRS II Transfers, and Lima  
16 Sierra Transfers or their value are recoverable from Sapp, Next Online, CRS II, and Lima Sierra  
17 pursuant to 11 U.S.C. § 550.

18           144. The Trustee is entitled to recover from Sapp, Next Online, CRS II, and  
19 Lima Sierra, respectively, interest on the amount of the Sapp Transfers, the Next Online  
20 Transfers, the CRS II Transfers, and the Lima Sierra Transfers at the federal judgment rate  
21 provided by 28 U.S.C. § 1961 from the date of the filing of this complaint until full payment of  
22 the value of the Sapp Transfers, the Next Online Transfers, the CRS II Transfers, and the Lima  
23 Sierra Transfers to the Trustee.

24                           **TWELFTH CLAIM FOR RELIEF:**  
25                           **(Disallowance of Claim Under 11 U.S.C. § 502(d))**  
26                           **(Against Sapp, Next Online, and CRS)**

1           145. The Trustee realleges paragraphs 1 through 11, 14 through 61, and  
2 65 through 67.

3           146. In MILA's schedule D, filed with the petition in this case, MILA  
4 scheduled a secured claim allegedly owed to Sapp in the amount of \$1,000,000. This claim was  
5 scheduled as noncontingent, liquidated, and undisputed.

6           147. Also in MILA's schedule D, filed with the petition in this case, MILA  
7 scheduled a secured claim allegedly owed to Sapp in the amount of \$250,000. This claim was  
8 scheduled as noncontingent, liquidated, and undisputed.

9           148. In MILA's schedule E, filed with the petition in this case, MILA  
10 scheduled an unsecured claim allegedly owed to Sapp in the amount of \$1,850,000. This claim  
11 was scheduled as noncontingent, liquidated, and undisputed.

12           149. On or about June 20, 2008, Sapp filed a proof of claim for a secured claim  
13 in the amount of \$188,838.39 which the Court has designated as claim number 65.

14           150. On or about May 21, 2008, CRS filed a proof of claim for an unsecured  
15 claim in the amount of \$3,060,729.16 which the Court has designated as claim number 45.

16           151. On or about June 20, 2008, Next Online filed a proof of claim for an  
17 unsecured claim in the amount of \$1,487,843.78 which the Court has designated as claim  
18 number 64.

19           152. Pursuant to 11 U.S.C. § 502(d), the Court shall disallow any claim of any  
20 entity from which property is recoverable under 11 U.S.C. §§ 550 or 553 of this title or that is a  
21 transferee of a transfer avoidable under 11 U.S.C. §§ 544, 547, or 548, unless such entity or  
22 transferee has paid the amount, or turned over any such property, for which such entity or  
23 transferee is liable under 11 U.S.C. §§ 550 or 553 to the Trustee.

24           153. As stated in the fifth and sixth claims for relief, Sapp, Next Online, and  
25 CRS are liable to the estate for avoidable transfers that they have not repaid to the Trustee.  
26

1           154.   Accordingly, the Court should deny the claims of Sapp, Next Online, and  
2 CRS.

3                                   **THIRTEENTH CLAIM FOR RELIEF:**  
4                                   **(Setoff)**  
5                                   **(Against Sapp, Next Online, and CRS)**

6           155.   The Trustee realleges paragraphs 1 through 67.

7           156.   The Trustee is entitled to offset the amount to be distributed on account of  
8 the allowed claims, if any, of Sapp, Next Online, and CRS in this bankruptcy case against the  
9 amount of the Trustee's judgment against them in this action.

10                                   **V. RELIEF REQUESTED**

11           The Trustee asks for the following relief:

12           1.     On the first claim for relief, judgment, including prejudgment interest,  
13 against Sapp according to proof at trial and not less than \$11,231,000.

14           2.     On the second, third, fourth, seventh and eighth and tenth claims for relief,  
15 judgment, including prejudgment interest according to proof at trial.

16           3.     On the fifth claim for relief, judgment declaring that the above-described  
17 transfers are avoided pursuant to 11 U.S.C. § 548; and that Trustee may recover the same, with  
18 interest, pursuant to 11 U.S.C. § 550 and 11 U.S.C. § 544(b).

19           4.     On the sixth claim for relief, judgment declaring that the above-described  
20 transfers are avoided pursuant to RCW Ch. 19.40; and that Trustee may recover the same, with  
21 interest, pursuant to 11 U.S.C. § 550; RCW Ch. 19.40 and any other applicable law;

22           5.     On the ninth claim for relief, judgment declaring that MILA owns the  
23 copyright registered by Next Online in 2002, and all works derived from it and/or from MILA's  
24 own software, works or intellectual property, including (without limitation) all rights to the  
25 Credex program and works derived therefrom, along with all further necessary or proper relief  
26 pursuant to 28 U.S.C. § 2202, including transfer and assignment of such copyright registration,  
along with awards of compensatory or statutory damages, attorneys fees and costs pursuant to

1 17 U.S.C. §§ 501, 504 and 505, an order enjoining defendants Sapp and Next Online (and all  
2 those acting in concert with them) from further utilizing or licensing the works, pursuant to 17  
3 U.S.C. §§ 502, and an order compelling defendants Sapp and Next Online to turn over and/or  
4 destroy all copies of the accused works;

5 6. On the eleventh claim for relief, judgment

6 (a) against Sapp avoiding the Sapp Transfers pursuant to 11 U.S.C.  
7 § 547(b), and awarding the Trustee judgment against Sapp pursuant to 11 U.S.C. § 550(a) in the  
8 amount of \$\$51,040, together with interest thereon at the federal judgment rate pursuant to  
9 28 U.S.C. § 1961 from the date of filing this complaint, until fully paid;

10 (b) against Next Online avoiding the Next Online Transfers pursuant to  
11 11 U.S.C. § 547(b), and awarding the Trustee judgment against Next Online pursuant to  
12 11 U.S.C. § 550(a) in the amount of \$4,260,000, together with interest thereon at the federal  
13 judgment rate pursuant to 28 U.S.C. § 1961 from the date of filing this complaint, until fully  
14 paid;

15 (c) against CRS II avoiding the CRS II Transfers pursuant to 11 U.S.C.  
16 § 547(b), and awarding the Trustee judgment against CRS II pursuant to 11 U.S.C. § 550(a) in  
17 the amount of \$347,314.52, together with interest thereon at the federal judgment rate pursuant  
18 to 28 U.S.C. § 1961 from the date of filing this complaint, until fully paid; and

19 (d) against Lima Sierra avoiding the Lima Sierra Transfers pursuant to  
20 11 U.S.C. § 547(b), and awarding the Trustee judgment against Lima Sierra pursuant to  
21 11 U.S.C. § 550(a) in the amount of \$86,788.85, together with interest thereon at the federal  
22 judgment rate pursuant to 28 U.S.C. § 1961 from the date of filing this complaint, until fully  
23 paid.

24 7. On the twelfth claim for relief, judgment against Sapp, Next Online, and  
25 CRS denying their claims against the estate.

26 8. On the thirteenth claim for relief, judgment allowing the Trustee to offset

1 the amount to be distributed on account of the allowed claims, if any, of Sapp, Next Online, and  
2 CRS in this bankruptcy case against the amount of the Trustee's judgment against them in this  
3 action.

4           9.     An award of costs, reasonable attorneys fees and pre- and post-judgment  
5 interest, as permitted by applicable law; and

6           10.    For such other relief as the Court may deem appropriate as to each claim  
7 for relief, including but not limited to remedies available for breach of trust as alleged in the  
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1 eighth claim for relief and prejudgment attachment or sequestration of Sapp's assets.

2 DATED this 29 day of August, 2008.

3 MILLER NASH LLP

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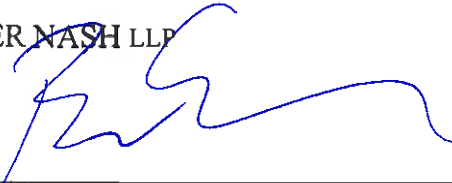
5  
6 Brian W. Esler, WSB No. 22168  
7 Bruce Rubin, WSB No. 37384 (application for  
8 admission to Western District forthcoming)  
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16 Attorneys for Plaintiff

17 **JURY DEMAND**

18 Plaintiff demands trial by jury.

19 MILLER NASH LLP

20 

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23 admission to Western District forthcoming)  
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