

CASE NUMBER: 10-2-37317-9 SEA

2. In answer to Paragraph 2, Defendants are without sufficient information to form a belief as to the truth of all of the allegations contained therein, and therefore deny the same.

3. Admit.

4. Admit.

5. In answer to Paragraph 5, Defendants are without sufficient information to form a belief as to the truth of the all of allegations contained therein and therefore deny the same.

6. In answer to Paragraph 6, Defendants are without sufficient information to form a belief as to the truth of all of the allegations contained therein, and therefore deny the same.

7. In answer to Paragraph 7, Defendants are without sufficient information to form a belief as to the truth of all of the allegations contained therein, and therefore deny the same.

8. In answer to Paragraph 8, Defendants are without sufficient information to form a belief as to the truth of all of the allegations contained therein, and therefore deny the same.

9. In answer to Paragraph 9, the allegations are asserted legal conclusions which do not require an answer by Defendants and are therefore denied.

## II. BACKGROUND FACTS

10. In answer to Paragraph 10, Defendants deny the allegations contained therein.

11. In answer to Paragraph 11, Defendants deny the allegations contained therein.

12. In answer to Paragraph 12, Defendants admit that they executed the Escrow Holdback Agreement attached to Plaintiff's complaint as Exhibit A and state that the document speaks for itself. With the exception of the above, any remaining allegations in Paragraph 12 are denied.

13. In answer to Paragraph 13, Defendants admit that the document speaks for itself. With the exception of the above, any remaining allegations in Paragraph 13 are denied.

14. Admit.

### III. CLAIMS

15. In answer to Paragraph 15, Defendants deny the allegations contained therein.

16. In answer to Paragraph 16, Defendants deny the allegations contained therein.

17. In answer to Paragraph 17, Defendants deny the allegations contained therein.  
contained therein.

By way of further answer, Defendants assert the following affirmative defenses:

#### AFFIRMATIVE DEFENSES

1. Plaintiff's have failed to state a claim upon which relief can be granted.
2. Plaintiff's alleged claims are barred by the doctrines of waiver, laches and/or estoppel.
3. Plaintiff's alleged claims are barred by applicable statutes of limitation.
4. Any damages or harm suffered by Plaintiff was caused in whole or in part by his own conduct.
5. Defendants reserves the right to add additional affirmative defenses as they determine to be appropriate at any time in the future.

#### COUNTERCLAIM

By way of counterclaims against Plaintiffs Shannon Calvin O'Neal by and through his guardian ad litem Jon Gillis and Tyler Homes Corporation (hereinafter referred to collectively as "Plaintiffs") Defendant Sterling assert the following:

1. By virtue of a series of loan transactions, Defendants have loaned Plaintiffs significant amounts of money in amounts to be proven at trial. These claims either have already or will be assigned to defendants Foundation Bank and Banner Bank.

2. On information and belief defendant Shannon Calvin O'Neil is not in the military service of the United States of America.

### REQUEST FOR RELIEF

WHEREFORE, Defendants request the following relief:

A. A judgment dismissing with prejudice all claims of Plaintiffs against Defendants for damages.

B. A judgment declaring the amount and priority of the named parties in and to the Holdback Funds subject to the Escrow Holdback Agreement in the amounts to be proven at trial; and

C. A judgment for Defendants attorney's fees and costs in accordance with applicable law.

D. A judgment declaring such other and further relief as may be just and equitable in the premises.

DATED this December 9, 2010.

Attorneys for Defendants Dennis Schnabel; Cherie Schnabel;  
and Sterling Gray Investments, LLC

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