

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at LEXINGTON

FIFTH THIRD BANK  
250 West Main Street  
Lexington, Kentucky 40507

Plaintiff,

-v-

ZAYAT STABLES, LLC  
401 Hackensack Avenue, 7th Floor  
Hackensack, New Jersey 07601

Statutory Agent:  
Corporation Service Company  
2711 Centerville Road, Suite 400  
Wilmington, Delaware 19808

-and-

PIONEER OF THE NILE, LTD  
P.O. Box 71  
Road Town  
Tortola, British Virgin Islands

-and-

AHMED ZAYAT  
401 Hackensack Avenue  
Hackensack, New Jersey 07601

-and-

DOES 1 THROUGH 100

Defendants.

) Case No. \_\_\_\_\_  
)  
) (Judge \_\_\_\_\_)  
)

) VERIFIED COMPLAINT  
)

For its Complaint against Defendants, Zayat Stables, LLC (“Zayat Stables”), Pioneer of the Nile, Ltd. (“Pioneer”), Ahmed Zayat (“Mr. Zayat”), (Zayat Stables, Pioneer, and Mr. Zayat

are sometimes collectively referred to as “Defendants”), and Does 1 through 100, Plaintiff Fifth Third Bank (“Fifth Third”), states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Fifth Third is an Ohio banking corporation, successor by merger with Fifth Third Bank, a Michigan banking corporation, and is located at 250 West Main Street, Lexington, Kentucky 40507.

2. Upon information and belief, Zayat Stables is a Delaware limited liability company, with its principal place of business located at 401 Hackensack Avenue, 7th Floor, Hackensack, New Jersey 07601.

3. Upon information and belief, Pioneer is an international company organized and registered in the British Virgin Islands, with its principal place of business located at P.O. Box 71, Road Town, Tortola, British Virgin Islands.

4. Upon information and belief, Mr. Zayat is an individual with an address of 401 Hackensack Avenue, Hackensack, New Jersey 07601. Zayat is the sole member of Zayat Stables and the chairman and chief executive officer of Pioneer.

5. Upon information and belief, Does 1 through 100 (“Doe Defendants”) may claim an interest in the collateral that is the subject of this action.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1332, as this is a civil action between citizens of different states and the value of the matter in controversy exceeds the sum of \$75,000.00, exclusive of costs and interest.

7. This Court has personal jurisdiction over the Defendants because in the loan documents entered into by the parties, which are the subject of this Complaint and which are described more fully below, Defendants agreed that a court of competent jurisdiction in Fayette

County, Kentucky shall have jurisdiction over all matters arising out of such loan documents. In addition, this court has personal jurisdiction over Defendants because, among other things, each Defendant has (a) purposefully committed, within the Commonwealth of Kentucky, the acts from which these claims arise and/or has committed unlawful acts outside the Commonwealth of Kentucky, knowing that such acts would cause injury in the Commonwealth; (b) transacted business in the Commonwealth of Kentucky; and/or (c) contracted for goods and/or services in the Commonwealth of Kentucky.

8. Venue is proper in this judicial district because in the loan documents entered into by the parties, which are the subject of this action and which are described more fully below, Defendants agreed that the venue for any dispute shall be a court of competent jurisdiction in Fayette County, Kentucky. In addition, venue in this judicial district is proper under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to Fifth Third's claims occurred in this judicial district and because Defendants have transacted business in this judicial district.

### **FACTUAL ALLEGATIONS**

#### **The Loans and Promissory Notes**

9. Zayat Stables executed and delivered to Fifth Third seven promissory notes evidencing seven different loans from Fifth Third to Zayat Stables.

10. Specifically, Zayat Stables executed and delivered the following seven notes to Fifth Third (the seven promissory notes are sometimes collectively referred to as the "Notes"):

(a) **August 1, 2007 Revolving Note** – Zayat Stables executed and delivered to Fifth Third a revolving note, effective date August 1, 2007, in the face amount of \$10,000,000, with a maturity date of July 31, 2009 (the "August 1, 2007 Note"). The August 1, 2007 Note required Zayat Stables to make quarterly interest payments at prime minus 1.00%. A true and accurate copy of the August 1, 2007 Note is attached hereto as **Exhibit A**.

(b) **February 25, 2008 Revolving Note** – Zayat Stables executed and delivered to Fifth Third a revolving note, effective date February 25, 2008, in the face amount of \$2,700,000, with a maturity date of March 1, 2010 (the “February 25, 2008 Note”). The February 25, 2008 Note required Zayat Stables to make quarterly interest payments at Prime minus 1.00%. A true and accurate copy of the February 25, 2008 Note is attached hereto as **Exhibit B**.

(c) **April 1, 2008 Term Note** – Zayat Stables executed and delivered to Fifth Third a term note, effective date April 1, 2008, in the original principal amount of \$6,000,000, with a maturity date of March 1, 2012 (the “First April 1, 2008 Note”). The First April 1, 2008 Note required Zayat Stables to make quarterly interest payments at Prime minus 1.00%, plus annual principal payments in the amount of \$2,000,000 on the first day of March each year, beginning on March 1, 2010. A true and accurate copy of the First April 1, 2008 Note is attached hereto as **Exhibit C**.

(d) **April 1, 2008 Term Note** – Zayat Stables executed and delivered to Fifth Third a term note, effective date April 1, 2008, in the original principal amount of \$10,000,000, with a maturity date of December 20, 2011 (the “Second April 1, 2008 Note”). The Second April 1, 2008 Note required Zayat Stables to make quarterly interest payments at Prime minus 1.00%, plus a principal payment in the amount of \$1,500,000 on December 20, 2009, and a principal payment in the amount of \$2,000,000 on December 20, 2010. A true and accurate copy of the Second April 1, 2008 Note is attached hereto as **Exhibit D**.

(e) **April 1, 2008 Term Note** – Zayat Stables executed and delivered to Fifth Third a term note, effective date April 1, 2008, in the original principal amount of \$3,945,970, with a maturity date of December 15, 2011 (the “Third April 1, 2008 Note”). The Third April 1, 2008 Note required Zayat Stables to make quarterly interest payments at Prime minus 1.00%, plus a principal payment in the amount of \$1,000,000 on December 20, 2009, and a principal payment in the amount of \$1,500,000 on March 1, 2010. A true and accurate copy of the Third April 1, 2008 Note is attached hereto as **Exhibit E**.

(f) **September 23, 2008 Term Note** – Zayat Stables executed and delivered to Fifth Third a term note, effective date September 23, 2008, in the original principal amount of \$3,000,000, and with a maturity date of March 1, 2009 (the “September 23, 2008 Note”). The September 23, 2008 Note required Zayat Stables to make quarterly interest payments at Prime minus 1.00%. A true and accurate copy of the September 23, 2008 Note is attached hereto as **Exhibit F**.

(g) **January 14, 2009 Draw Note** – Zayat Stables executed and delivered to Fifth Third a draw note, effective date January 14, 2009, in the maximum principal amount of \$3,000,000, and with a maturity date of January 1, 2010 (the “January 14, 2009 Note”). The January 14, 2009 Note required Zayat Stables to

make quarterly interest payments at the Libor Rate plus 2.75%. A true and accurate copy of the January 14, 2009 Note is attached hereto as **Exhibit G**.

11. All of the Notes contained the following provisions:

(a) **Security Agreement** – To secure payment of the note and all modifications, extensions, renewals, and obligations (as defined by the Security Agreement), Zayat Stables granted Fifth Third a security interest in all of Zayat Stable's then owned and thereafter acquired interests in the collateral as described in the corresponding Security Agreement.

(b) **Use of Proceeds** – Zayat Stables certified that that proceeds from the note were being used for business purposes. If the note was a renewal, in whole or in part, of a previous obligation, the acceptance by Fifth Third of the note would not effectuate a payment, but rather a continuation of the previous obligation.

(c) **Affirmative Covenants** – In addition to all of the other covenants set forth in the corresponding Security Agreement or other obligations, Zayat Stables represented and warranted that Zayat Stables and all guarantors would provide annual financial statements and tax returns to Fifth Third and that Zayat Stables would maintain its primary banking services and accounts with Fifth Third.

(d) **Events of Default** – Upon the occurrence of an “Event of Default,” as defined in the corresponding Security Agreement or other obligations, Fifth Third could, at its option, without any demand or notice whatsoever, declare the note and all other obligations to be fully due and payable in their aggregate amount, together with accrued interest and all prepayment premiums, fees, and charges applicable thereto.

(e) **Remedies** – Upon the occurrence of an “Event of Default,” Fifth Third could, at its option, cease making advances under the note (if the note allowed for such advances), declare the note and all other obligations of Zayat Stables to be fully due and payable in their aggregate amount together with accrued interest plus any applicable prepayment premiums, fees, and charges. In addition to other remedies permitted by law, Fifth Third could at any time, without notice, apply the collateral to the note and/or other obligations, whether due or not, and Fifth Third could, at its option, proceed to enforce and protect its rights by an action at law or in equity or by any other appropriate proceedings.

(f) **Late Payments; Default Rates; Fees** – The parties agreed that if any payment under the note is not made when due (whether by acceleration or otherwise) or within ten days thereafter, Zayat Stables would pay Fifth Third a late payment fee as provided for in any loan agreement or five percent (5%) of the payment amount, whichever is greater, with a minimum fee of \$20.00. In addition, the parties agreed that if an “Event of Default” occurred, Zayat Stables

would pay Fifth Third a fixed charge of \$25.00, or Zayat Stables agreed that Fifth Third may, without notice, increase the above stated interest rate by six percent (6%), whichever is greater.

(g) **Modification; Waiver of Secured Party** – The parties agreed that the modification or waiver of any Zayat Stable obligation or Fifth Third’s rights under the note must be contained in writing and signed by Fifth Third.

(h) **Governing Law; Consent to Jurisdiction** – The parties agreed that the laws of the Commonwealth of Kentucky govern the construction of the note and the rights, remedies and duties of the parties, unless the law of the state where any of the collateral is located dictates that the law of such other state shall govern. The parties also agreed that venue shall be a court of competent jurisdiction in Fayette County, Kentucky, and that such court shall have jurisdiction over all matters arising out of the note. The parties further agreed that service of process in any such proceeding shall be effective if mailed to Zayat Stables at the address set forth in the note.

(i) **Attorneys’ Fees** – The parties agreed that in the event of any action or proceeding to declare or enforce the terms of the note (including the documents and instruments referred to in the note), the prevailing party is entitled to recover its reasonable attorneys’ fees and other costs, at the trial and appellate level including bankruptcy actions and actions for relief from the automatic stay in addition to any other relief that may be granted. The parties further agreed that all of Fifth Third’s advances, charges, costs and expenses, including, without limitation, reasonable attorneys’ fees, in connection with the note, and in protection and exercise of any rights or remedies under the note, together with interest thereon at the highest rate then applicable, shall be paid by Zayat Stables to Fifth Third on demand.

(j) **Jury Waiver** – The parties agreed that Zayat Stables (as well as any endorser or guarantor of the note) waives the right to a trial by jury of any matter arising out of the note or the transactions contemplated by the note.

### **Amendment to the Loan Documents**

12. To induce Fifth Third to enter into the January 14, 2009 Note, on or about January 14, 2009, Fifth Third and Defendants entered into an Amendment to the Loan Documents (the “Amendment”). A true and accurate copy of the Amendment is attached hereto as **Exhibit H**.

13. Pursuant to the terms of the Amendment, if Zayat Stables defaulted on any of the Notes, such default would be considered a default under all of the Notes thereby entitling Fifth

Third to accelerate the principal balance and all accrued interest due and owing under all of the Notes.

### **The Security Agreement**

14. On or about January 14, 2009, Fifth Third entered into an Amended and Restated Loan and Security Agreement with Zayat Stables and Pioneer (the “Security Agreement”). A true and accurate copy of the Security Agreement is attached hereto as **Exhibit I**.

15. Pursuant to its terms, the Security Agreement was made as collateral security for: (a) the Notes; and (b) all other “Obligation(s) which include all loans, advances, indebtedness and each and every other obligation or liability of [Zayat Stables and Pioneer] owed to [Fifth Third], however, created, of every kind and description whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease overdraft, agreement or otherwise, whether or not secured by additional collateral, whether originated with [Fifth Third] or owed to others and acquired by [Fifth Third] by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and each and every obligation or liability arising under any Obligation, any and all Rate Management Agreements, letters of credit now or hereafter issued by [Fifth Third] for the benefit of or at the request of [Zayat Stables and Pioneer], all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys’ fees incurred by [Fifth Third] hereunder of any other document, instrument or agreement related to

any of the forgoing. The Obligations shall also include all costs of collection, including reasonable attorneys' fees."

16. Pursuant to the terms of the Security Agreement, Zayat Stables and Pioneer granted to Fifth Third a security interest in the following:

- (a) all thoroughbred bloodstock and/or stallion shares and/or fractional interest(s) therein, their offspring and young, both born and unborn, and/or fractional interest(s) therein, stallion seasons and shares, and any other interest(s) in any of the above owned by Zayat Stables and/or Pioneer, however classified, whether now owned or after-acquired, including all substitutions thereof (the "Equine Collateral");
- (b) all policies of insurance maintained on the Equine Collateral and all rights to proceeds thereof and refunds thereunder, whether now owned or after-acquired;
- (c) all accounts, deposit accounts, accounts receivable, notes receivable, chattel paper, general intangibles and rights to payment arising out of or in any way relating to the sale, transfer, or other conveyance of all or any interest in any of the Equine Collateral, whether now owned or after-acquired;
- (d) all racing income, breeder's awards income from sales of stallion seasons and shares and any other income derived from or in any way related to the Equine Collateral, whether now owned or after-acquired;
- (e) all certificates of title, certificates of registration and other evidences of ownership, relating to, or in any way connected with, the Equine Collateral, including without limitation, all Jockey Club Certificates of Registration and all stallion share certificates and stallion syndication agreements, whether now owned or after-acquired;
- (g) the savings account, having the account number 7380700760, held by Zayat Stables with Fifth Third (the "Fifth Third Savings Account") (the Equine Collateral and the Fifth Third Savings Account is hereinafter referred to as the "Collateral"); and
- (h) all proceeds and products of the Collateral.

17. Pursuant to the terms of the Security Agreement, Zayat Stables and Pioneer agreed that on an annual basis they would send to Fifth Third: (a) a list of the Collateral and the locations thereof and of all replacements and substitutions of, or additions to, the Collateral

acquired since the last such report, all as of the last day of the immediately preceding month; (b) notify Fifth Third of the entry of any Collateral into a public sale; (c) notify Fifth Third of the private or public sale of any Collateral; and (d) such other information covering the Collateral as Fifth Third may from time to time reasonably request.

18. Pursuant to the terms of the Security Agreement, Zayat Stables and Pioneer agreed to use any and all sales proceeds from the Collateral to pay down any line of credit with Fifth Third if necessary to comply with borrowing base requirements.

19. Pursuant to the terms of the Security Agreement, Zayat Stables and Pioneer agreed that they would provide a list to Fifth Third of buyers, commission merchants, selling agents and auctioneers to or through whom they may sell the Collateral pursuant to the provisions of Section 1324 of the Food Security Act of 1985, 7 U.S.C. 1631, so that Fifth Third could give notices required by, and enjoy the protections afforded by, Section 1324 of the Food Security Act. Zayat Stables and Pioneer also agreed to update this list by providing Fifth Third with any additions or deletions immediately upon becoming aware of such changes.

20. Pursuant to the terms of the Security Agreement, an “Event of Default” takes place when any one of the following occurs:

- (a) Zayat Stables and Pioneer fail to make any payment towards the principal or interest on the Notes, or towards any other obligation, when due.
- (b) Any representation or warranty of Zayat Stables and Pioneer set forth in any agreement, instrument, document, certificate or financial statement evidencing, guarantying, securing or otherwise provided to Fifth Third in connection with the Notes, or any other obligation, is materially inaccurate or misleading.
- (c) Zayat Stables and Pioneer fail to observe or perform any term or condition in the Notes or any other term or condition set forth in any agreement, instrument, document, certificate or financial statement evidencing, guarantying or otherwise related to the Notes.

(d) In the judgment of Fifth Third, any material adverse change occurs in the existing or prospective financial condition of Zayat Stables and Pioneer that may affect the ability of those entities to repay the obligations, or Fifth Third deems itself insecure.

(e) Any sale, conveyance or transfer of any rights in the Collateral securing the obligations under the Security Agreement, or any destruction, loss or damage of or to the Collateral in any material respect.

21. Pursuant to the terms of the Security Agreement, when an “Event of Default” occurs, Fifth Third is entitled, but not limited, to the following remedies:

(a) Fifth Third shall have all rights and remedies in and against the Collateral and otherwise of a secured party under the Uniform Commercial Code of Kentucky and of any other states where Zayat Stables and Pioneer reside or are organized, as well as all other applicable laws and all rights contained in the Security Agreement, in the Notes, and in all other instruments securing or related to the Notes and/or Zayat Stable’s and Pioneer’s other Obligations.

(b) Fifth Third may require Zayat Stables and Pioneer, at their expense, to assemble the Collateral and make it available to Fifth Third at the place or places to be designated by Fifth Third. Fifth Third shall have the right to sell the Collateral at public or private sale, for cash or credit.

(c) Because Zayat Stables and Pioneer are responsible for all costs of collection (including all costs associated with repossessing, storing, insuring, and selling the Collateral) and interest on the secured obligation, Zayat Stables and Pioneer agreed that it was reasonable for Fifth Third to act expeditiously in exercising its rights upon default and, thus, Zayat Stables and Pioneer agreed that ten days notice of any foreclosure sale or other disposition of the Collateral would constitute reasonable notice.

(d) Fifth Third has the right to obtain the services of other brokers, investment bankers, consultants, and other professionals to assist Fifth Third in the collection and/or disposition of any of the Collateral.

22. Fifth Third’s rights and remedies under the Security Agreement are cumulative, and may be exercised together, separately, and in any order. No delay on the part of Fifth Third in the exercise of any such right or remedy shall operate as a waiver. No single or partial exercise by Fifth Third of any right or remedy shall preclude any other further exercise of it or the exercise of any other right or remedy. No waiver or indulgence by Fifth Third of any “Event

of Default” shall be effective unless in writing and signed by Fifth Third, nor shall a waiver on one occasion be construed as a waiver of any other occurrence in the future.

23. Pursuant to the terms of the Security Agreement, the laws of the Commonwealth of Kentucky govern the construction of the Security Agreement and the rights, remedies and duties of the parties thereto, unless the laws of the state where any part of the Collateral is located dictate that the laws of such other state shall govern.

24. Pursuant to the terms of the Security Agreement, the parties agreed that venue shall be a court of competent jurisdiction in Fayette County, Kentucky, and that such court shall have jurisdiction over all matters and controversies arising out of the Security Agreement.

25. Pursuant to the terms of the Security Agreement, the parties agreed that that service of process in any such proceeding shall be effective if mailed to Zayat Stables and Pioneer at the addresses set forth in the Security Agreement. The address listed in the Security Agreement for Zayat Stables is 401 Hackensack Avenue, 7th Floor, Hackensack, New Jersey 07601. The address listed for Pioneer is P.O. Box 71, Road Town, Tortola, British Virgin Islands.

26. Pursuant to the terms of the Security Agreement, the parties agreed that in the event of any action or proceeding to declare or enforce the terms of the Security Agreement (including the documents and instruments referred to herein), the prevailing party shall be entitled to recover its reasonable attorneys’ fees and other costs, at the trial and appellate level, including bankruptcy actions and actions for relief from the automatic stay in addition to any other relief that may be granted.

### **The Guaranties**

27. On or about January 14, 2009, Mr. Zayat executed a guaranty, whereby he unconditionally agreed to guarantee the payment of all monies due, or which may thereafter become to due, to Fifth Third by Zayat Stables (the “Mr. Zayat Guaranty”). A true and accurate copy of the Mr. Zayat Guaranty is attached hereto as **Exhibit J**.

28. The Mr. Zayat Guaranty terminates on March 1, 2012, but such termination does not relieve Mr. Zayat from liability with respect to any obligation created or incurred prior to the date of termination, interest accruing thereon, or fees, costs, and expenses incurred with respect to such obligations on or after such date.

29. Pursuant to the terms of the Mr. Zayat Guaranty, Mr. Zayat agreed that expenses and reasonable attorneys’ fees incurred by Fifth Third as the result of his breach of any terms of the Guaranty would be paid by Mr. Zayat to Fifth Third.

30. Pursuant to the terms of the Mr. Zayat Guaranty, Mr. Zayat agreed that within 90 days after the end of each calendar year and from time to time, as reasonably requested by Fifth Third, he would provided his updated financial statements to Fifth Third.

31. Pursuant to the terms of the Mr. Zayat Guaranty, Mr. Zayat agreed that the state and federal courts in the county and state where Fifth Third’s principal place of business is located or any other court in which Fifth Third initiate proceedings will have exclusive jurisdiction over all matters arising out of the Mr. Zayat Guaranty.

32. Pursuant to the terms of the Mr. Zayat Guaranty, the parties agreed to waive the right to trial by jury for any matters arising in connection with the Mr. Zayat Guaranty.

33. Pursuant to the terms of the Mr. Zayat Guaranty, the maximum aggregate liability of Mr. Zayat under the Mr. Zayat Guaranty is \$38,7000,000.00.

34. On or about January 14, 2009, Pioneer executed a guaranty, whereby it unconditionally agreed to guarantee the payment of all monies due, or which may thereafter become to due, to Fifth Third by Zayat Stables (the "Pioneer Guaranty"). A true and accurate copy of the Pioneer Guaranty is attached hereto as **Exhibit K**.

35. The Pioneer Guaranty terminates on March 1, 2012, but such termination does not relieve Pioneer from liability with respect to any obligation created or incurred prior to the date of termination, interest accruing thereon, or fees, costs, and expenses incurred with respect to such obligations on or after such date.

36. Pursuant to the terms of the Pioneer Guaranty, Pioneer agreed that expenses and reasonable attorneys' fees incurred by Fifth Third as the result of its breach of any term of the Guaranty would be paid by Pioneer to Fifth Third.

37. Pursuant to the terms of the Pioneer Guaranty, Pioneer agreed that within 90 days after the end of each calendar year and from time to time, as reasonably requested by Fifth Third, it would provide its updated financial statements to Fifth Third.

38. Pursuant to the terms of the Pioneer Guaranty, Pioneer agreed that the state and federal courts in the county and state where Fifth Third's principal place of business is located or any other court in which Fifth Third initiated proceedings will have exclusive jurisdiction over all matters arising out of the Pioneer Guaranty.

39. Pursuant to the terms of the Pioneer Guaranty, the parties agreed to waive the right to trial by jury for any matters arising in connection with the Pioneer Guaranty.

40. Pursuant to the terms of the Pioneer Guaranty, the maximum aggregate liability of Pioneer under the Pioneer Guaranty is \$38,7000,000.00.

### **Zayat Stables Defaults on the Loans**

41. Zayat Stables defaulted on the August 1, 2007 Note and the September 23, 2008 Note by failing to make payments on the principal and interest due on March 1, 2009 and July 31, 2009.

42. On August 28, 2009, Fifth Third, through counsel, sent a Notice of Default and Reservation of Rights Letter to all Defendants (the "Notice Letter"). A true and accurate copy of the Notice Letter is attached hereto as **Exhibit L**.

43. The Notice Letter explained that the failure to make the required payments on the August 1, 2007 Note and the September 23, 2008 Note constituted "Events of Default" under the terms of the Notes and the Security Agreement.

44. The Notice Letter also requested that Defendants provide certain information to Fifth Third. To date, Defendants have not supplied all of the requested information.

45. Finally, the Notice Letter demanded that all Equine Collateral revenue (including, but not limited to, purse money, stallion service fees, breeder's awards, sales proceeds – whether private or public – and all other proceeds from the Equine Collateral) be paid directly to Fifth Third to reduce the interest and principal owed by Defendants, unless expressly agreed by Fifth Third.

46. Since the Notice Letter was sent to Defendants, Zayat Stables, upon information and belief, has sold portions of the Equine Collateral, and has purchased additional Equine Collateral. Besides paying off the September 23, 2008 Note and paying approximately \$1.3 million in principal payments toward other obligations, however, neither Zayat Stables nor any of the other Defendants have made any other principal payments to Fifth Third.

47. While Zayat Stables has paid off the September 23, 2008 Note, it has failed to cure its default on the August 1, 2007 Note, despite demands by Fifth Third to do so. Fifth Third, in good faith, attempted to work with Zayat Stables to restructure the loans and remedy the defaults under the August 1, 2007 Note. Zayat Stables has refused to agree upon a reasonable work-out program satisfactory to Fifth Third and which is sufficient to protect Fifth Third's interests. Zayat Stables has also been unable to provide Fifth Third with a meaningful plan to pay back the Fifth Third debt as required. In addition, Zayat Stables has refused to agree to the solutions proposed by Fifth Third. For example, Zayat Stables has refused to allow consultants designated by Fifth Third to assist in evaluating Zayat Stables, even though such action is explicitly provided for in the Security Agreement.

48. On December 14, 2009, after failing to reach any agreement with Defendants regarding the defaults, Fifth Third, pursuant to the terms of the Notes, the Security Agreement, and the Amendment, sent a letter to Defendants notifying them that Fifth Third was accelerating all amounts due under the Notes, and demanded the immediate payment of all the Notes (the "Demand Letter"). A true and accurate copy of the Demand Letter is attached hereto as **Exhibit M.**

**COUNT I**  
**(Breach of the Notes Against Zayat Stables)**

49. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 48, as if fully set forth herein.

50. The Notes are valid and enforceable contracts between Fifth Third and Zayat Stables.

51. Fifth Third has performed its obligations under the Notes and has satisfied all conditions precedent to their enforcement.

52. Zayat Stables has breached the terms of the August 1, 2007 Note by, among other things, failing to make payments on the principal and interest due on July 31, 2009, as well as failing to maintain all of its primary banking services and accounts with Fifth Third.

53. Pursuant to the Amendment, Zayat Stables' default under the August 1, 2007 Note is considered a default under all of the Notes, and entitles Fifth Third to accelerate the principal balance and all accrued interest due and owing under all the Notes.

54. Zayat Stables has failed to cure its breach of the August 1, 2007 Note, despite written demand to do so.

55. Due to Zayat Stables' breach of the August 1, 2007 Note, Fifth Third, pursuant to the terms of the Notes and the Amendment, has declared the entire balances of all the Notes immediately due and payable.

56. Under the terms of the Security Agreement, if Zayat Stables defaults on any of the Notes, Fifth Third is entitled to all remedies provided for the in the Security Agreement.

57. As a direct and proximate result of Zayat Stables' breach of the August 1, 2007 Note, and Fifth Third's acceleration of all amounts owed by Zayat Stables to Fifth Third, Fifth Third has suffered and continues to suffer damages that, as of December 14, 2009, are in the amount of \$34,265,970.00, plus \$190,505.11 in accrued interest, plus all interest that will continue to accrue, together with applicable late charges, attorneys' fees, and other costs of collection. Fifth Third is also entitled to all remedies provided for the in the Security Agreement, including, but not limited to: (a) enforcing all rights in and against the Collateral and otherwise provided for in the Kentucky Uniform Commercial Code; (b) requiring Zayat Stables and Pioneer to assemble the Collateral and make it available to Fifth Third at a location determined by Fifth Third; (c) selling the Collateral at a public or private sale, for cash or on credit; (d)

allowing Fifth Third to enter any premises where the Collateral is located, and to use Zayat Stables' personnel and equipment to take possession of the Collateral; and (e) obtaining the services of other brokers, investment bankers, consultants, and other professionals to assist Fifth Third in the collection and/or disposition of any of the Collateral.

**COUNT II**  
**(Preliminary and Permanent Injunctive Relief)**

58. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 57, as if fully set forth herein.

59. Under the terms of the Security Agreement, if Zayat Stables defaults on any of the Notes, Fifth Third is entitled to all remedies provided for in the Security Agreement, including, but not limited to: (a) enforcing all rights in and against the Collateral and otherwise provided for in the Kentucky Uniform Commercial Code; (b) requiring Zayat Stables and Pioneer to assemble the Collateral and make it available to Fifth Third at a location determined by Fifth Third; (c) selling the Collateral at a public or private sale, for cash or on credit; (d) allowing Fifth Third to enter any premises where the Collateral is located, and to use Zayat Stables' personnel and equipment to take possession of the Collateral; and (e) obtaining the services of other brokers, investment bankers, consultants, and other professionals to assist Fifth Third in the collection and/or disposition of any of the Collateral.

60. By failing to make required payments under the terms of the August 1, 2007 Note, Zayat Stables, pursuant to the Amendment, has defaulted on all of the Notes.

61. Defendants have refused to comply with Fifth Third's attempts to exercise its remedies under the Security Agreement.

62. Upon information and belief, the Collateral may be inadequate to satisfy Defendants' debts and obligations, the financial condition of the Defendants is in question due to

their failure to make payments to Fifth Third, and Defendants have sold portions of the Equine Collateral.

63. Accordingly, Fifth Third will be permanently and irreparably harmed if it is not permitted to exercise the remedies provided for in the Security Agreement, including but not limited to: (a) enforce its rights in and against the Collateral; (b) require Zayat Stables and Pioneer to assemble the Collateral and make it available to Fifth Third at a location determined by Fifth Third; (c) sell the Collateral at a public or private sale, for cash or on credit; (d) enter any premises where the Collateral is located, and to use Zayat Stables' personnel and equipment to take possession of the Collateral; and (e) obtain the services of other brokers, investment bankers, consultants, and other professionals to assist Fifth Third in the collection and/or disposition of any of the Collateral.

64. No adequate remedy at law exists to protect Fifth Third from Defendants' actions, which will permanently damage Fifth Third's interest in the Collateral.

65. By granting a preliminary and permanent injunction enjoining Defendants to permit Fifth Third to exercise all of its remedies under the terms of the Security Agreement, the interest and equities of Fifth Third greatly exceeds and outweighs any interests which Defendants may have in continuing to default on their obligations under the Notes, the Security Agreement, and the Guarantees.

**COUNT III**  
**(Breach of Guaranty Against Mr. Zayat)**

66. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 65, as if fully set forth herein.

67. The Mr. Zayat Guaranty, which jointly and severally guarantees Zayat Stables' payments on the Notes, is valid and enforceable contract between Fifth Third and Mr. Zayat.

68. Fifth Third has performed its obligations under the Mr. Zayat Guaranty and has satisfied all conditions precedent to its enforcement.

69. By reason of Zayat Stables' defaults under the Notes and the Security Agreement, Fifth Third has accelerated the amounts owed by Zayat Stables, and has demanded that the debt evidenced by the Notes and the Mr. Zayat Guaranty is immediately due and payable.

70. To date, Mr. Zayat has not made payment to Fifth Third under the Mr. Zayat Guaranty.

71. Mr. Zayat has breached the Mr. Zayat Guaranty by failing to make payment as required by the terms of the Mr. Zayat Guaranty and has failed to cure his breaches of the Mr. Zayat Guaranty.

72. As a direct and proximate result of Mr. Zayat's breach of the Mr. Zayat Guaranty, Fifth Third has suffered and continues to suffer damages that, as of December 14, 2009, are in the amount of \$34,265,970.00, plus \$190,505.11 in accrued interest, plus all interest that will continue to accrue, together with applicable late charges, attorneys' fees, and other costs of collection.

**COUNT IV**  
**(Breach of Guaranty Against Pioneer)**

73. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 72, as if fully set forth herein.

74. The Pioneer Guaranty, which jointly and severally guarantees Zayat Stables' payments on the Notes, is a valid and enforceable contract between Fifth Third and Pioneer.

75. Fifth Third has performed its obligations under the Pioneer Guaranty and has satisfied all conditions precedent to its enforcement.

76. By reason of Zayat Stables' defaults under the August 1, 2007 Note and the Security Agreement, Fifth Third has accelerated the amounts owed by Zayat Stables, and has demanded that the debt evidenced by the Notes and the Pioneer Guaranty is immediately due and payable.

77. To date, Pioneer has not made payment to Fifth Third under the Pioneer Guaranty.

78. Pioneer has breached the Pioneer Guaranty by failing to make payment as required by the terms of the Pioneer Guaranty and has failed to timely cure its breaches of the Pioneer Guaranty.

79. As a direct and proximate result of Pioneer's breach of the Pioneer Guaranty, Fifth Third has suffered and continues to suffer damages that, as of December 14, 2009, are in the amount of \$34,265,970.00, plus \$190,505.11 in accrued interest, plus all interest that will continue to accrue, together with applicable late charges, attorneys' fees, and other costs of collection.

**COUNT V**  
**(Foreclosure on Collateral)**

80. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 79, as if fully set forth herein.

81. Zayat Stables has defaulted on the Notes and the Security Agreement.

82. By reason of Zayat Stables' defaults, Fifth Third has provided notice that the amounts due under all of the Notes are immediately due and payable.

83. Fifth Third's rights, security interest, and liens are valid, first, superior, and prior to any rights, security interests, or liens of any person or entity in and to the Collateral, including Zayat Stables, Mr. Zayat, Pioneer, and Doe Defendants.

interest is the best and first lien on the Collateral.

84. Doe Defendants may claim an interest in the Collateral, but said interest is subordinate to Fifth Third's interest.

85. Due to Zayat Stables' defaults, Fifth Third, pursuant to the terms of the Security Agreement, is entitled to foreclose on the Collateral, and is further entitled to all other remedies available to it under the Security Agreement and the Kentucky Uniform Commercial Code.

**COUNT VI  
(Replevin)**

86. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 85, as if fully set forth herein.

87. As set forth above, Fifth Third holds a valid, perfected security interest in the Collateral.

88. As a result of Zayat Stables' defaults under the Notes and the Security Agreement, Fifth Third, pursuant to the Security Agreement, is entitled to permanent possession, custody, and control of the Collateral.

**COUNT VII  
(Appointment of Receiver)**

89. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 88, as if fully set forth herein.

90. Upon information and belief, the Collateral may be inadequate to satisfy the debts and obligations Defendants owe Fifth Third under the Notes, the Security Agreement, and the Guarantees.

91. Upon information and belief, the financial condition of Defendants is in question because of their inability to make payments to Fifth Third.

92. Upon information and belief, Zayat Stables has sold portions of the Equine Collateral, yet still failed to make scheduled payments to Fifth Third.

93. In addition, at points in the lending relationship, Defendants have provided inaccurate information to Fifth Third and have also failed to provide requested information.

94. As demonstrated above, Fifth Third has valid claims against Defendants for breaches of the Notes, the Security Agreement, and the Guarantees.

95. Based on the foregoing, there is no adequate remedy at law to preserve Fifth Third's security interest in the Collateral.

96. Equity demands that a receiver be appointed to protect Fifth Third's security interest in the Collateral.

97. Fifth Third requests that a receiver be appointed to manage the day-to-day operations of Zayat Stables, to conserve the assets of Zayat Stables, and to protect Fifth Third's security interest in the Collateral.

**COUNT VIII**  
**(Attorneys' Fees and Costs)**

98. Fifth Third incorporates by reference the allegations contained in Paragraphs 1 through 97, as if fully set forth herein.

99. Pursuant to the Notes, the Security Agreement, and the Guarantees, Fifth Third is entitled to reasonable attorneys' fees and costs incurred, with interest accruing thereon, due to the Fifth Third's enforcement of the terms of the Notes, the Security Agreement, and the Guarantees.

**WHEREFORE**, Fifth Third prays for judgment in its favor against Defendants as follows:

(a) On Count I, an award of damages against Zayat Stable that, as of December 14, 2009, are in the amount of \$34,265,970.00, plus \$190,505.11 in accrued interest, plus all interest that will continue to accrue, together with applicable late charges, attorneys' fees, and other costs of collection, as well as all remedies provided for the in the Security Agreement;

(b) On Count II, a preliminary and permanent injunction permitting Fifth Third to: (a) enforce its rights in and against the Collateral; (b) require Zayat Stables and Pioneer to assemble the Collateral and make it available to Fifth Third at a location determined by Fifth Third; (c) sell the Collateral at a public or private sale, for cash or on credit; (d) enter any premises where the Collateral is located, and to use Zayat Stables' personnel and equipment to take possession of the Collateral; and (e) obtain the services of other brokers, investment bankers, consultants, and other professionals to assist Fifth Third in the collection and/or disposition of any of the Collateral award;

(c) On Count III, an award of damages against Mr. Zayat that, as of December 14, 2009, are in the amount of \$34,265,970.00, plus \$190,505.11 in accrued interest, plus all interest that will continue to accrue, together with applicable late charges, attorneys' fees, and other costs of collection;

(d) On Count IV, an award of damages against Pioneer that, as of December 14, 2009, are in the amount of \$34,265,970.00, plus \$190,505.11 in accrued interest, plus all interest that will continue to accrue, together with applicable late charges, attorneys' fees, and other costs of collection;

(e) On Count V, that the Collateral be sold as on execution, and the proceeds applied to the payment of Fifth Third's claims and to the liens and interests of the Doe Defendants;

(f) On Count VI, an award of permanent possession of the Collateral;

(g) On Count VII, an Order that a receiver be appointed to manage the day-to-day operations of Zayat Stables, to conserve the assets of Zayat Stables, and to protect Fifth Third's security interest in the Collateral;

(h) On Count VIII, an award of costs and attorneys' fees, as expressly authorized by the Notes, the Security Agreement, and the Guaranties;

(f) On all Counts, an award of pre- and post- judgment interest at the default rate of interest specified in the Notes, the Security Agreement, the Guaranties, and the Amendment; and

(g) On all Counts, such further relief that this Court deems just and proper.

Dated: December 15, 2009

Respectfully submitted,

s/ W. Craig Robertson III

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