

1 J. Brian McTigue (Cal. Bar No. 87224)
2 Gregory Y. Porter (D.C. Bar No. 458603)
3 McTigue & Porter LLP
4 5301 Wisconsin Ave., N.W., Suite 350
5 Washington, D.C. 20015
6 Tel: 202-364-6900
7 Fax: 202-364-9960
8 bmcTigue@mctiguelaw.com
9 gporter@mctiguelaw.com

COPY

2007 APR 24 PM 2:50
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

10 Attorneys for Plaintiffs Evelyn McCoy and all others similarly situated

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV07-02693 FMC (AFM)

13 Evelyn McCoy, and all others similarly
14 situated

15 Plaintiffs,

16 vs.

17 Plan Committee, Fremont General
18 Corporation, Fremont General Corporation
19 Board of Directors, James A. McIntyre,
20 Louis J. Rampino, Wayne R. Bailey,
21 Thomas W. Hayes, Robert F. Lewis, Russell
22 K. Mayerfeld, Dickinson C. Ross, Patrick E.
23 Lamb, Raymond G. Meyers, **Does 1-10**

24 Defendants

Case No.:

Complaint For:

1. Violation of §406 of ERISA
2. Violation of §404 of ERISA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **COMPLAINT**

2 This action involves two pension plans sponsored by Fremont General
3 Corporation (“Fremont”): the Fremont General Corporation Employee Stock Ownership
4 Plan (“ESOP”) and the Fremont General Corporation and Affiliated Companies
5 Investment Incentive Plan (“Investment Plan”). Plaintiff Evelyn McCoy alleges the
6 following based on information and belief and an investigation by her counsel, which
7 included a review of certain: Forms 5500 (“Form 5500”) for the ESOP and Investment
8 Plan (collectively, the “Plans”) filed with the United States Department of Labor
9 (“DOL”); Forms 10-K and 11-K filed by Fremont with the Securities and Exchange
10 Commission (“SEC”); and documents describing the Plans provided to Plaintiff.

11 **I. NATURE OF THE ACTION**

12 1. This is a civil enforcement action brought pursuant to the Employee
13 Retirement Income Security Act (“ERISA”), 29 U.S.C. §1001, *et seq.*, and in particular
14 under ERISA §409, 29 U.S.C. §1109, for losses to the Plans as a result of defendants’
15 breaches of fiduciary duty from January 1, 2003 to the present (the “Class Period”).

16 2. The Plans are retirement plans established and sponsored by Fremont to
17 provide retirement income benefits for Fremont’s employees and employees of certain
18 other participating employers (all affiliates of Fremont).

19 3. The Plans have lost millions of dollars by investing in Fremont General
20 Corporation Common Stock (“Company Stock”).

21 4. Plaintiff’s claims arise from the failure of the defendants, who are
22 fiduciaries of the Plans, to act solely in the interest of the participants and beneficiaries of
23 the Plans and from the defendants’ failure to exercise the required care, skill, prudence
24 and diligence in administering the Plans and investing the assets of the Plans. Plaintiff
25 alleges that the fiduciaries of the Plans, including the Plan Committee, Fremont, and
26 Fremont’s Board of Directors (“Board”) violated their fiduciary duties to the Plans under
27 §§404, 405, and 406 of ERISA, 29 U.S.C. §§1104, 1105, and 1106, by, among other
28 things: (1) failing to prudently and loyally manage the assets of the Plans by offering

1 Company Stock as an investment option for the Plans; (2) causing or allowing the Plans
2 to acquire and hold Common Stock when such investments were imprudent; (3) failing to
3 properly monitor and inform co-fiduciaries, thereby causing or allowing co-fiduciaries to
4 breach their duties in connection with the Plans' investments in Company Stock; and (4)
5 causing or allowing the Investment Plan to acquire Company Stock from Fremont in
6 violation of ERISA's prohibitions on transactions between fiduciaries and employee
7 benefit plans.

8 **II. JURISDICTION AND VENUE**

9 5. ERISA provides for exclusive federal jurisdiction over these claims. The
10 Plans are "employee benefit plans" within the meaning of §3(3) of ERISA, 29 U.S.C.
11 §1002(3), and Plaintiffs are "participants" within the meaning of §3(7) of ERISA, 29
12 U.S.C. §1002(7), who are authorized pursuant to §502(a)(2) and (3) of ERISA, 29 U.S.C.
13 §1132(a)(2) and (3) to bring the present action on behalf of the participants and
14 beneficiaries of the Investment Plan to obtain appropriate relief under §§502 and 409 of
15 ERISA, 29 U.S.C. §§1132 and 1109.

16 6. This Court has subject matter jurisdiction over this action pursuant to 28
17 U.S.C. §1331 (federal question) and ERISA §502(e)(1), 29 U.S.C. §1132(e)(1).

18 7. This Court has personal jurisdiction over the Defendants because the Court
19 has subject matter jurisdiction under ERISA.

20 8. Venue is proper in this district pursuant to ERISA §502(e)(2), 29 U.S.C.
21 §1132(e)(2) because the Plan Committee and Fremont General Corporation are located at
22 2425 Olympic Blvd., Santa Monica, California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. PARTIES

A. Plaintiff.

9. **Plaintiff Evelyn McCoy (“McCoy”).** McCoy participated in the Investment Plan during the Class Period. She lives in Meridian, Idaho. McCoy’s account in the Investment Plan was invested in Company Stock During the Class Period.

B. Defendants.

10. **Defendant Plan Committee (“Plan Committee”).** The Plan Committee has full and complete power to administer the Plans and also has overall responsibility for selecting the investment options offered by the Plans. The Plan Committee and its members are Named Fiduciaries of the Plans. The following individual defendants (collectively referred to as “Plan Committee Members”) serve on the Plan Committee:

a. **Louis J. Rampino (“Rampino”).** Defendant Rampino is a member of the Plan Committee and Fremont General Corporation Board of Directors (“Board”). He has served as Fremont’s President since 1995 and as Fremont’s Chief Executive Officer since 2004. As a member of the Plan Committee, Rampino has full and complete power to administer the Plans and also has overall responsibility for selecting the investment options offered by the Plans.

b. **Wayne R. Bailey (“Bailey”).** Defendant Bailey is a member of the Plan Committee and the Board. He also serves as Fremont’s Executive President and Chief Operating Officer. As a member of the Plan Committee, Bailey has full and complete power to administer the Plans and also has overall responsibility for selecting the investment options offered by the Plans.

c. **Patrick E. Lamb (“Lamb”).** Defendant Lamb is a member of the Plan Committee. He also serves as Fremont’s Senior Vice President, Treasurer, Chief Financial Officer, and Chief Accounting Officer. As a member of the Plan Committee, Lamb has full and complete power to administer the Plans and also has overall responsibility for selecting the investment options offered by the Plans.

1 d. **Raymond G. Meyers (“Meyers”)**. Defendant Meyers is a member
2 of the Plan Committee. He also serves as Fremont’s Senior Vice President and Chief
3 Administrative Officer. As a member of the Plan Committee, Bailey has full and
4 complete power to administer the Plans and also has overall responsibility for selecting
5 the investment options offered by the Plans.

6 11. **Defendant Fremont General Corporation (“Fremont”)**. Fremont is the
7 Plan Administrator and a Named Fiduciary for the Plans. It has the sole and exclusive
8 authority to appoint a committee, the Plan Committee, and delegate fiduciary powers and
9 duties to the Plan Committee.

10 12. **Defendant Fremont General Corporation Board of Directors**
11 **(“Board”)**. Fremont acts through the Board. Thus, the Board exercises authority to
12 select, monitor, retain, and remove members of the Plan Committee by virtue of its power
13 to appoint the Plan Committee. The following individual defendants (collectively
14 referred to as “Board Members”) serve on the Board.

15 e. **James A. McIntyre (“McIntyre”)**. Defendant McIntyre is
16 Chairman of the Board and has served as Chairman since 1989. From 1989 to 2004,
17 McIntyre also served as the Chief Executive Officer of Fremont. As a member of the
18 Board, McIntyre exercised authority to select, monitor, retain, and remove the members
19 of the Plan Committee by virtue of the Board’s power to appoint the Plan Committee.

20 f. **Louis J. Rampino (“Rampino”)**. Defendant Rampino is a member
21 of the Board. He has served as Fremont’s President since 1995 and as Fremont’s Chief
22 Executive Officer since 2004. As a member of the Board, Rampino exercised authority
23 to select, monitor, retain, and remove the members of the Plan Committee by virtue of
24 Board’s power to appoint the Plan Committee.

25 g. **Wayne R. Bailey (“Bailey”)**. Defendant Bailey is a member of the
26 Board. He also serves as Fremont’s Executive President and Chief Operating Officer.
27 As a member of the Board, Bailey exercised authority to select, monitor, retain, and
28

1 remove the members of the Plan Committee by virtue of Board's power to appoint the
2 Plan Committee.

3 h. **Thomas W. Hayes ("Hayes")**. Defendant Hayes is a member of the
4 Board. As a member of the Board, Hayes exercised authority to select, monitor, retain,
5 and remove the members of the Plan Committee by virtue of Board's power to appoint
6 the Plan Committee.

7 i. **Robert F. Lewis ("Lewis")**. Defendant Lewis is a member of the
8 Board. As a member of the Board, Lewis exercised authority to select, monitor, retain,
9 and remove the members of the Plan Committee by virtue of Board's power to appoint
10 the Plan Committee.

11 j. **Russell K. Mayerfeld ("Mayerfeld")**. Defendant Mayerfeld is a
12 member of the Board. As a member of the Board, Mayerfeld exercised authority to
13 select, monitor, retain, and remove the members of the Plan Committee by virtue of
14 Board's power to appoint the Plan Committee.

15 k. **Dickinson C. Ross ("Ross")**. Defendant Ross is a member of the
16 Board. As a member of the Board, Ross exercised authority to select, monitor, retain,
17 and remove the members of the Plan Committee by virtue of Board's power to appoint
18 the Plan Committee.

19 13. Defendants McIntyre, Rampino, Bailey, Lamb, and Meyers are the
20 executive officers of Fremont, collectively referred to as "Insider Defendants".
21 Defendants Hayes, Lewis, Mayerfeld and Ross are outside directors, collectively referred
22 to as "Outsider Defendants".

23 14. **Defendants DOES 1-20** are fiduciaries of the Plans, whose exact identities
24 will be ascertained through discovery.

1 (“Merrill”) and invested by the Trustee in the investment options offered by the
2 Investment Plan.

3 **2. *The Fremont General Corporation ESOP.***

4 25. The ESOP is an “employee pension benefit plan” within the meaning of
5 ERISA §3(2)(A), 29 U.S.C. §1002(2)(A). Pursuant to ERISA, the relief requested in this
6 action is for the benefit of the ESOP.

7 26. Fremont is the sponsor, Plan Administrator, and a Named Fiduciary of the
8 ESOP.

9 27. As Plan Administrator and Named Fiduciary for the ESOP, Fremont has
10 discretion to appoint a Plan Committee to carry out any or all of Fremont’s fiduciary
11 duties to the ESOP.

12 28. Fremont, acting through the Board, has appointed a Plan Committee.

13 29. The Plan Committee has full and complete power to administer the ESOP
14 and also has overall responsibility for selecting, monitoring, evaluating, and removing the
15 ESOP’s investments.

16 30. The ESOP invests almost exclusively in Company Stock.

17 **B. The Fiduciaries of the Plans Named as Defendants.**

18 31. ERISA requires every plan to provide for one or more named fiduciaries of
19 the Plan pursuant to ERISA §402(a)(1), 29 U.S.C. §1002(21)(A).

20 32. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries
21 under ERISA §402(a)(1), but also any other persons who in fact perform fiduciary
22 functions. ERISA §3(21)(A)(i), 29 U.S.C. §1002(21)(A)(i) (stating that a person is a
23 fiduciary “to the extent . . . he exercises any discretionary authority or discretionary
24 control respecting management of such plan or exercises any authority or control
25 respecting management of disposition of its assets . . .”).

26 33. Each of the defendants is a fiduciary to the Plans and owes fiduciary duties
27 to the Plans and their participants under ERISA in the manner and to the extent set forth
28 in the documents governing the Plans, through their conduct, and under ERISA.

1 34. Defendant Fremont is the Administrator of the Plans pursuant to ERISA
2 §3(16)(A), 29 U.S.C. §1002(16)(A), and a Named Fiduciary under ERISA §402(a)(2), 29
3 U.S.C. §1029(a)(2), and the documents governing the Plans. Fremont exercised broad
4 responsibility for management and administration of the Plans and, among its other
5 duties, is responsible for overseeing the Plans' investments, policies, and the
6 performance, as well as overseeing other fiduciaries to the Plans, including appointing
7 and monitoring the Plan Committee.

8 35. As Plan Administrator, Fremont exercises certain powers for the Plans,
9 including the power to establish a funding policy, select alternative investment funds,
10 receive and review reports on the financial condition of the Plans and on the receipts and
11 disbursements from the Plans, appoint one or more investment managers to manage any
12 or all of the assets of the Plans, and appoint one or more persons to act as a Plan
13 Committee to discharge the duties of the Plan Administrator.

14 36. Fremont, acting through its Board, appointed a Plan Committee to
15 discharge its some or all of its duties to the Plans. The members of the Plan Committee
16 are Named Fiduciaries for the Plans.

17 37. The Plan Committee has full and complete power to administer the Plans
18 and also has overall responsibility for selecting the investments available under the Plans.

19 38. Defendants McIntyre, Rampino, Bailey, Hayes, Lewis, Mayerfeld, and
20 Ross are Board Members. The Board and Board Members exercised the authority to
21 select, monitor, retain, and remove the Plan Committee and, accordingly, exercised
22 authority and oversight over the Plan Committee, who reported to the Board and Board
23 Members regarding the Plans.

24 39. Defendants Rampino, Bailey, Lamb, and Meyers are Plan Committee
25 Members. The Plan Committee and Plan Committee Members exercised the authority to
26 select, monitor, and remove the Plans investments, including the discretion and authority
27 to liquidate the Plans' investments in Company Stock and stop new investments by the
28 Plans in Company Stock.

1 **C. The Defendants Breached Their Fiduciary Duties Of Prudence And Loyalty**
2 **To The Plans By Causing Or Allowing The Plans To Invest In Company**
3 **Stock When They Knew Or Should Have Known That Company Stock Was**
4 **Not A Prudent Investment.**

5 40. Fremont is a financial services holding company which is engaged in
6 brokered subprime mortgage lending, commercial real estate construction lending
7 nationwide, and residential loan servicing, primarily through its wholly-owned
8 subsidiary, Fremont Investment & Loan ("FIL").

9 41. Some time on or before January 1, 2003, the defendants developed and
10 implemented a plan to engage in unsafe and unsound banking practices through Fremont
11 and FIL in an effort to lift the price of Company Stock.

12 42. Under this plan, defendants operated FIL with management whose policies
13 and practices were detrimental to FIL.

14 43. Under this plan, defendants operated FIL without effective risk
15 management policies and procedures in place in relation to FIL's primary line of business
16 of brokered subprime mortgage lending.

17 44. Under this plan, defendants operated FIL without effective risk
18 management policies and procedures in place in relation to FIL's other primary line of
19 business of commercial real estate construction lending.

20 45. Under this plan, defendants operated FIL with inadequate underwriting
21 criteria and excessive risk in relation to the kind and quality of assets held by FIL.

22 46. Under this plan, defendants operated FIL without an accurate, rigorous and
23 properly documented Allowance for Loan and Lease Loss Methodology.

24 47. Under this plan, defendants operated FIL with a large volume of poor
25 quality loans.

26 48. Under this plan, defendants caused FIL to engage in unsatisfactory lending
27 practices.

28

1 49. Under this plan, defendants caused FIL to operate without an adequate
2 strategic plan in relation to the volatility of FIL’s business lines and the kind and quality
3 of assets held by FIL.

4 50. Under this plan, defendants caused FIL to operate with inadequate capital
5 in relation to the kind and quality of assets held by FIL.

6 51. Under this plan, defendants caused FIL to operate in such a manner as to
7 produce low and unsustainable earnings.

8 52. Under this plan, defendants caused FIL to operate with inadequate
9 provisions for liquidity in relation to the volatility of FIL’s business lines and the kind
10 and quality of assets held by the FIL.

11 53. Under this plan, defendants caused FIL to market and extend adjustable-
12 rate mortgage (“ARM”) products to subprime borrowers in an unsafe and unsound
13 manner that greatly increased the risk that borrowers will default on the loans or
14 otherwise cause losses to FIL, including ARM products with one or more of the
15 following characteristics:

16 (i) qualifying borrowers for loans with low initial payments based on an
17 introductory or “start” rate that will expire after an initial period, without an
18 adequate analysis of the borrower’s ability to repay the debt at the fully-indexed
19 rate;

20 (ii) approving borrowers without considering appropriate documentation
21 and/or verification of their income;

22 (iii) containing product features likely to require frequent refinancing to
23 maintain an affordable monthly payment and/or to avoid foreclosure;

24 (iv) including substantial prepayment penalties and/or prepayment penalties
25 that extend beyond the initial interest rate adjustment period;

26 (v) providing borrowers with inadequate and/or confusing information
27 relative to product choices, material loan terms and product risks, prepayment
28 penalties, and the borrower's obligations for property taxes and insurance;

1 (vi) approving borrowers for loans with inadequate debt-to-income analyses
2 that do not properly consider the borrowers' ability to meet their overall level of
3 indebtedness and common housing expenses; and/or (vii) approving loans or
4 "piggyback" loan arrangements with loan-to-value ratios approaching or
5 exceeding 100 percent of the value of the collateral.

6 54. Under this plan, defendants caused FIL to make mortgage loans without
7 adequately considering the borrower's ability to repay the mortgage according to its
8 terms.

9 55. Under this plan, defendants caused FIL to operate in violation of section
10 23B of the Federal Reserve Act, 12 U.S.C. §371c-1, made applicable to state nonmember
11 insured institutions by section 18(j)(1) of the Act, 12 U.S.C. §1828(j)(1), in that FIL
12 engaged in transactions with its affiliates on terms and under circumstances that in good
13 faith would not be offered to, or would not apply to, nonaffiliated companies.

14 56. Under this plan, defendants caused FIL to operate inconsistently with the
15 FDIC's Interagency Advisory on Mortgage Banking and Interagency Expanded Guidance
16 for Subprime Lending Programs.

17 57. By operating in this manner on or before 2003 to the present, FIL (and
18 Fremont) was able to generate and report a large volume of subprime business that it
19 would not have been able to generate and report had defendants operated FIL consistent
20 with sound underwriting, risk management, and lending practices.

21 58. As a consequence of causing FIL to operate inconsistent with sound
22 underwriting, risk management, and lending practices, the price of Company Stock
23 increased from the beginning of 2003 until early 2007 when defendants' plan to engage
24 in unsafe and unsound banking practices in an effort to lift the price of Company Stock
25 began to unravel as, predictably, subprime borrowers began to default on loans in large
26 numbers.

1 59. As the extent of the consequences of FIL's unsound underwriting, risk
2 management, and lending practices became known, Company Stock declined
3 dramatically, losing approximately fifty percent of its value since January 1, 2007.

4 60. Defendants knew or should have known about FIL's unsound underwriting,
5 risk management, and lending practices and the impact of such practices on Company
6 Stock because defendants are all insiders, directors, or senior executives at Fremont as
7 well as fiduciaries for the Plans.

8 61. During the Class Period (January 1, 2003 to the present), the Investment
9 Plan and ESOP collectively invested, that is acquired and/or held, in any given year
10 between \$150 million and \$210 million in Company Stock.

11 62. Defendants caused or allowed the Plans to purchase and maintain multi-
12 million dollar investments in Company Stock during the Class Period even though they
13 knew or should have known that Company Stock was an imprudent investment because
14 of FIL's unsound underwriting, risk management, and lending practices.

15 63. Although defendants caused or allowed the Plans to acquire millions of
16 dollars in Company Stock during the Class Period at great loss to the Plans, defendants
17 were far more prudent with their own investments in Company Stock. For example,
18 since August 2006, defendant McIntyre (as trustee and fiduciary of his family trust) has
19 sold over \$11 million worth of Company Stock. And defendants Bailey, Lamb, Rampino
20 and Meyers (all Plan Committee Members) during 2007 have sold, respectively, \$1.9
21 million, \$571 thousand, \$2.4 million, and \$635 thousand worth of Company Stock.

22 64. By causing or allowing the Plans to purchase and maintain multi-million
23 dollar investments in Company Stock during the Class Period, defendants caused the
24 Plans to lose millions of dollars on the Plans' investments in Company Stock.

1 **D. The Defendants Breached Their Fiduciary Duties Of Prudence And Loyalty**
2 **To The Investment Plan By Causing The Investment Plan To Purchase**
3 **Company Stock Directly From Fremont When Such Purchases Were**
4 **Prohibited Transactions.**

5 65. During the Class Period, defendants caused or allowed the Investment Plan
6 to acquire at least \$37 million in Company Stock from Fremont, which acquisitions were
7 not transactions on a national securities exchange.

8 66. Fremont, as employer and plan sponsor, is a party in interest under ERISA.
9 Fremont, as Plan Administrator and a Named Fiduciary, is a fiduciary under ERISA.

10 67. ERISA prohibits fiduciaries from causing plans to purchase securities
11 issued by the employer or plan sponsor.

12 68. By causing the Investment Plan to acquire at least \$37 million in Company
13 Stock from Fremont during the Class Period, defendants violated ERISA §406, 29 U.S.C.
14 §1106.

15 **V. ERISA'S FIDUCIARY STANDARDS & PROHIBITED TRANSACTIONS**

16 69. ERISA imposes strict fiduciary duties of loyalty and prudence upon the
17 defendants as fiduciaries of the Plan. ERISA §404(a), 29 U.S.C. §1104(a), states, in
18 relevant part, that:

19 [A] fiduciary shall discharge his duties with respect to a plan solely
20 in the interest of the participants and beneficiaries and —

21 (A) for the exclusive purpose of

22 (i) providing benefits to participants and their
23 beneficiaries; and

24 (ii) defraying reasonable expenses of administering the
25 plan;

26 (B) with the care, skill, prudence, and diligence under the
27 circumstances then prevailing that a prudent man acting in a
28

1 like capacity and familiar with such matters would use in the
2 conduct of an enterprise of like character and with like aims;

3 (C) by diversifying the investments of the plan so as to minimize
4 the risk of large losses, unless under the circumstances it is
5 clearly prudent not to do so; and

6 (D) in accordance with the documents and instruments governing
7 the plan insofar as such documents and instruments are
8 consistent with the provisions of this title and Title IV.

9 70. ERISA also imposes explicit co-fiduciary duties on plan fiduciaries.

10 ERISA §405, 29 U.S.C. §1105, states, in relevant part, that:

11 In addition to any liability which he may have under any other
12 provision of this part, a fiduciary with respect to a plan shall be
13 liable for a breach of fiduciary responsibility of another fiduciary
14 with respect to the same plan in the following circumstances:

15 (1) if he participates knowingly in, or knowingly undertakes to
16 conceal, an act or omission of such other fiduciary, knowing
17 such act or omission is a breach; or

18 (2) if, by his failure to comply with section 404(a)(1) in the
19 administration of his specific responsibilities which give rise
20 to his status as a fiduciary, he has enabled such other
21 fiduciary to commit a breach; or

22 (3) if he has knowledge of a breach by such other fiduciary,
23 unless he makes reasonable efforts under the circumstances to
24 remedy the breach.

25 71. Under ERISA, fiduciaries that exercise discretionary authority or control
26 over the selection of plan investments and the selection of plan service providers must act
27 prudently and solely in the interest of participants in the plan when selecting investments.
28

1 72. A fiduciary’s duty of loyalty and prudence require it to disregard plan
2 documents or directives that it knows or reasonably should know would lead to an
3 imprudent result, or would otherwise harm plan participants or beneficiaries. ERISA
4 §404(a)(1)(d), 29 U.S.C. §1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan
5 documents or directives that would lead to an imprudent result or that would harm plan
6 participants or beneficiaries, nor allow others, including those whom they direct or who
7 are directed by a plan to do so.

8 73. Under ERISA, a monitoring fiduciary must ensure that the other fiduciaries
9 are performing their fiduciary obligations, including those with respect to the investment
10 of plan assets, and take prompt and effective action to protect the plan and participants
11 when they are not. In addition, a monitoring fiduciary must provide the other fiduciaries
12 with accurate information in their possession that they know or reasonably should know
13 that the other fiduciaries must have in order to prudently manage the plan and the plan
14 assets.

15 74. The general duties of loyalty and prudence imposed by §404 of ERISA are
16 supplemented by a detailed list of transactions that are expressly prohibited by §406 of
17 ERISA, 29 U.S.C. §1106, and are considered “per se” violations because they entail a
18 high potential for abuse. More specifically, section 406 prohibits fiduciaries from
19 purchasing employer stock, using plan assets for the fiduciaries’ benefit, and acting for
20 the benefit of another in any transaction involving the plan. ERISA’s prohibited
21 transaction provisions, thus prohibit fiduciaries from causing plans to engage in
22 transactions with the plan sponsor/employer, including causing a plan to invest in
23 employer securities. Although ERISA provides certain exemptions from prohibited
24 transactions, such exemptions are affirmative defenses.

1 **VI. CLASS ALLEGATIONS**

2 75. Representative Plaintiff McCoy bring this action on behalf of a class
3 defined as:

4 All participants in the Fremont General Corporation Employee Stock
5 Ownership Plan (“ESOP”) and the Fremont General Corporation and
6 Affiliated Companies Investment Incentive Plan (“Investment Plan”)
7 (collectively the “Plans”).

8 76. Class certification is appropriate under Fed.R.Civ.P. 23(a) and (b)(1),
9 (b)(2), and/or (b)(3).

10 77. The class satisfies the numerosity requirement because it is composed of
11 thousands of persons, in numerous locations. The Investment Plan has approximately
12 3,300 participants. The ESOP has approximately 1,700 participants. The number of
13 class members is so large that joinder of all its members is impracticable.

14 78. Common questions of law and fact include:

15 A. Whether defendants were fiduciaries responsible for selecting,
16 evaluating, and monitoring the investments of the Plans, including Company
17 Stock;

18 B. Whether Fremont and the Board Members were fiduciaries
19 responsible for appointing, monitoring, and communicating with Plan Committee
20 Members;

21 C. Whether defendants caused or allowed the Plans to invest in
22 Company Stock;

23 D. Whether defendants knew or should have known that Company
24 Stock was an imprudent investment for the Plans because of Fremont’s and FIL’s
25 unsound underwriting, risk management, and lending practices defendants;

26 E. Whether defendants breached their fiduciary duties to the Plans and
27 engaged in prohibited transactions by causing the Plans to invest in Company
28 Stock;

1 F. Whether defendants should have liquidated the Plans' investments in
2 Company Stock;

3 G. Whether defendants should have stopped new investments in
4 Company Stock during the Class Period;

5 H. Whether defendants can prove the affirmative defense that the Plans'
6 investments in Company Stock were exempt from ERISA provisions prohibiting
7 transactions between a plan and the plan sponsor and plan fiduciaries; and

8 I. Whether the Plans and participants suffered losses as a result of
9 defendants' fiduciary breaches.

10 79. Plaintiff's claims are typical of the claims of the Class. She has no interests
11 that are antagonistic to the claims of the Class. She understands that this matter cannot
12 be settled without the Court's approval. Plaintiff is not aware of another suit pending
13 against defendants arising from the same circumstances.

14 80. Plaintiff will fairly and adequately protect the interests of the Class.
15 Plaintiff is committed to the vigorous representation of the Class. Plaintiff's counsel,
16 McTigue & Porter LLP, are experienced in class action and ERISA litigation. Counsel
17 have agreed to advance the costs of the litigation contingent upon the outcome. Counsel
18 are aware that no fee can be awarded without the Court's approval.

19 81. A class action is the superior method for the fair and efficient adjudication
20 of this controversy. Joinder of all members of the class is impracticable. The losses
21 suffered by some of the individual members of the Class may be small, and it would
22 therefore be impracticable for individual members to bear the expense and burden of
23 individual litigation to enforce their rights. Moreover, the defendants, as fiduciaries of
24 the Plans, were obligated to treat all Class members similarly as Plan participants under
25 written plan documents and ERISA, which impose uniform standards of conduct on
26 fiduciaries. Individual proceedings, therefore, would pose the risk of inconsistent
27 adjudications. Plaintiff is unaware of any difficulty in the management of this action as a
28 class action.

1 82. This Class may be certified under Rule 23(b).

2 A. 23(b)(1). As an ERISA breach of fiduciary duty action, this action is
3 a classic 23(b)(1) class action. Prosecution of separate actions by individual
4 members would create the risk of (A) inconsistent or varying adjudications with
5 respect to individual members of the Class that would establish incompatible
6 standards of conduct for the defendants opposing the Class, or (B) adjudications
7 with respect to individual members of the Class that would, as a practical matter,
8 be dispositive of the interests of the other members not parties to the adjudication
9 or substantially impair or impede their ability to protect their interests.

10 B. 23(b)(2). This action is suitable as a class action under 23(b)(2)
11 because the Defendants have acted or refused to act on grounds generally
12 applicable to the Class as a whole, thereby making appropriate final injunctive,
13 declaratory or other appropriate equitable relief with respect to the Class.

14 C. 23(b)(3). This action is suitable to proceed as a class action under
15 23(b)(3) because questions of law and fact common to the members of the Class
16 predominate over individual questions, and this class action is superior to other
17 available methods for the fair and efficient adjudication of this controversy. Given
18 the nature of the allegations, no class member has an interest in individually
19 controlling the prosecution of this matter, and Plaintiffs are aware of no
20 difficulties likely to be encountered in the management of this matter as a class
21 action.
22
23
24
25
26
27
28

1 COUNT II

2 **Engaging in Prohibited Transactions by Causing the Plans to**
3 **Acquire Company Stock from Fremont**
4 **(Violation of §406 of ERISA, 29 U.S.C. §1106 by Defendants)**

5 88. Plaintiff incorporates the allegations contained in the previous paragraphs
6 of this Complaint as if fully set forth herein.

7 89. At all relevant times, defendants acted as fiduciaries within the meaning of
8 ERISA §3(21)(A), 29 U.S.C. §1002(21)(A), by exercising authority and control with
9 respect to the management of the Plans and the Plans' assets.

10 90. Defendants, by their actions and omissions in authorizing or causing the
11 Plans to acquire Company Stock from Fremont caused the Plans to engage in transactions
12 that defendants knew or should have known constituted acquisitions of employer
13 securities, dealing with the Plans' assets for Fremont's and other defendants' benefit, and
14 acting for Fremont in a transaction with the Plans. sales of exchanges of property
15 between the Plans and parties in interest, the furnishing of services by parties in interest
16 to the Plans, and transactions with fiduciaries in violation of §§406(a)(1)(E), and
17 406(b)(1), (2), 29 U.S.C. §§1106(a)(1)(E), and 29 U.S.C. §§1106(b)(1), (2).

18 91. As a direct and proximate result of these prohibited transaction violations,
19 the Plans, and indirectly Plaintiff and the Plans' other participants and beneficiaries,
20 invested millions of dollars in Company Stock in violation of ERISA.

21 92. Pursuant to ERISA §502(a)(2), 29 U.S.C. §1132(a)(2) and 29 U.S.C.
22 §1109(a), defendants are liable to restore all losses to the Plans resulting from
23 defendants' violations of §§406, 29 U.S.C. §§1106.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

COUNT III

15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Claim for Relief Against all Defendants for Breach of Co-Fiduciary Duties
(Violation of §405 of ERISA, 29 U.S.C. §1105 by defendants)**

93. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

94. This Count is brought against all defendants.

95. By virtue of the facts and events alleged herein, defendants to this count, by failing to comply with their specific fiduciary responsibilities under ERISA 404(a)(1), enabled their co-fiduciaries to commit violations of ERISA and, with knowledge of these breaches, participated jointly with the other fiduciaries in their breaches, and failed to make reasonable efforts to remedy the breaches. Accordingly, the Plans' fiduciaries are each liable for the others' violations pursuant to ERISA §405(a)(2) and (3), 29 U.S.C. §1105(a)(2) and (3).

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Declare that the defendants, and each of them, have violated ERISA's prohibited transactions provisions and breached their duties under ERISA;
2. Issue an order certifying a class under Fed. R. Civ. P. 23;
3. Issue an order compelling defendants to restore all losses suffered by the Plans resulting from the Plans' investments in Company Stock;
4. Order equitable restitution and other appropriate equitable monetary relief against defendants;
5. Award such other equitable or remedial relief as may be appropriate, including the permanent removal of the defendants from any positions of trust with respect to the Plans and the appointment of independent fiduciaries to administer the Plans;
6. Enjoin defendants collectively, and each of them individually, from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

