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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

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8 John Papagni;
9 Pamela L. Albion;
10 BYRON W. BACCHI IRREVOCABLE
TRUST, by Eddie M. Bacchi,
Trustee; EDDIE M. BACCHI &
11 VIRGINIA M. BACCHI 1991
LIVING TRUST, by
Eddie M. Bacchi, Trustee;
12 and WILLIAM L. BACCHI &
TERRI L. BACCHI REVOCABLE
13 TRUST, by William L. BACCHI,
Trustee,
14
15 Plaintiffs,
16 vs.
17 Hammersmith Trust, L.L.C.
David Gilliland; [Jane Doe]
18 Gilliland; [John Doe]
Tsang, [John Doe] Houran;
19 and [John Doe] Van Aggol
20 Defendants.

VERIFIED COMPLAINT FOR:

- 1. BREACH OF CONTRACT
- 2. COMMON COUNTS
- 3. FRAUD AND MISREPRESENTATION
- 4. FRAUD AND NEGLIGENT MISREPRESENTATION
- 5. BREACH OF CONTRACT THIRD PARTY BENEFICIARY
- 6. CONVERSION
- 7. CONSTRUCTIVE TRUST
- 8. VIOLATION SECURITY LAWS
- 9. BREACH OF FIDUCIARY DUTY
- 10. TORTIOUS BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
- 11. ACCOUNTING
- 12. CONSPIRACY
- 13. FEDERAL RACKETEERING VIOLATION OF R.I.C.O.

JURY TRIAL REQUESTED

21 THE PARTIES

22 1. As used herein, the term "Plaintiff" shall mean and refer
23 to, and be equivalent to, "Plaintiffs", as the context of the
24 sentence may require. At all material times, Plaintiffs BYRON W.
25 BACCHI IRREVOCABLE TRUST, by Eddie M. Bacchi, Trustee (hereafter
26 "Byron Trust"); EDDIE M. BACCHI & VIRGINIA M. BACCHI 1991 LIVING
27 TRUST, by Eddie M. Bacchi, Trustee (hereafter "Eddie Trust"); and
28

1 WILLIAM L. BACCHI & TERRI L. BACCHI REVOCABLE TRUST, by William L.
2 BACCHI, Trustee (hereafter "William Trust"), each respectively
3 was, and is, a trust entity properly formed, and in good standing,
4 appearing by its respective Trustee.

5
6 2. Plaintiffs John Papagni (hereafter "Papagni"), and Pamela
7 L. Albion ("Albion"), each is an individual, a member in a 50/50%
8 partnership of Papagni and Albion, jointly and severally, and a
9 real party in interest, holding interests in claims being asserted
10 hereby. The investments referred to herein as having been made by
11 Papagni, and/or by Albion, have each been made by a 50/50% general
12 partnership of Papagni and Albion, jointly and severally.

13
14 3. Each Plaintiff is directly, or via its/their agent(s), or
15 Trustee(s), a General Partner in one or more of 8 partnerships
16 which are known as "AMP576," "AMP577," "AMP704," "AMP710,"
17 "AMP715," "AMP718," "AMP722," "AMP725," and "AMP730,"
18 respectively. In his capacity as Trustee of the Eddie Trust, and
19 the Byron Trust, Eddie Bacchi is a General Partner in the
20 partnerships referred to herein, and known as "AMP704," and
21 "AMP722" respectively. In his capacity as Trustee of the William
22 Trust, William Bacchi is a General Partner in the partnership
23 which is referred to herein and known as "AMP725."

24
25 4. Atlantic Capital Consulting Corporation (hereafter
26 "ACCC"), is a Bahamian corporation formed by Plaintiffs, their
27 partnerships, and/or their agents, and used by Plaintiffs for the
28 purpose of entering into the contracts sued on here, as, and for,

1 the benefit of Plaintiffs, and at all times was acting as an agent
2 of Plaintiffs in the transactions which are the subjects of this
3 action.

4
5 5. Financial Services Management Investment Corporation
6 (hereafter "FSMIC") is a Nevada corporation which was used by
7 Albion and Papagni to enter into the contracts sued on here.

8
9 6. Defendants David Gilliland and his wife (Jane Doe)
10 Gilliland (both referred to herein jointly and severally as
11 "Gilliland") are individuals. Plaintiffs are informed Defendants
12 sued herein as [John Doe] Tsang ("Tsang"), [John Doe] Houran
13 ["Houran"], and/or [John Doe] Van Aggol ("Aggol"), are all
14 individuals. Plaintiffs are unaware of the true first names of the
15 "[John Doe]" Defendants, and therefore names ~~them~~ them by their last
16 names with the "John Doe" or "Jane Doe" first names shown. When
17 Plaintiffs learn the true and correct first names of these
18 individuals, Plaintiffs will seek to amend their pleadings.
19 Plaintiffs are informed Defendant Hammersmith Trust, L.L.C.
20 ("Hammersmith") is an entity, corporation, partnership or Limited
21 Liability Company, which is owned by the individual Defendants
22 Gilliland, Tsang, Houran, and/or Aggol. Plaintiffs are informed
23 Defendants Hammersmith, JC Bradford Company ("Bradford"), and
24 Northern Trust Company ("Northern"), each is an entity,
25 corporation, partnership or Limited Liability Company, neither of
26 which is in good standing, nor qualified to do business, in the
27 State of California. Until different information is known,
28 Hammersmith, Bradford, and Northern are among the Defendants

1 referred to herein as "Corporations," and Gilliland (both), Tsang,
2 Houran, and Van Aggol are among the Defendants referred to
3 hereafter as "Individuals."
4

5 7. At all times herein mentioned, Defendants and each of
6 them were the agents, servants and/or employees of their
7 co-defendants and, in doing the things herein alleged, were acting
8 both for their individual benefits, as well as within the purpose
9 and scope of said agency or employment.
10

11 8. As used herein, the terms "the corporation" and "sham
12 corporation" shall mean and refer to the Defendants who are, or
13 are named as, corporations, and the term "individual Defendant"
14 shall mean and refer to individuals who are, or are named as,
15 Defendants. Plaintiffs are informed and believe, and based upon
16 such information and belief, allege that each corporate defendant
17 is a sham corporation, allegedly organized, existing and doing
18 business within and under the laws of the State of California, or
19 some other state, and although it has been sued in its corporate
20 capacity, each is referred to herein as sham corporation because:
21

22 a) It would be unjust and inequitable for the Court to
23 recognize the corporate existence of each sham corporation, in
24 that each purported corporation was and is the alter ego of the
25 other named Defendants herein. At all times herein mentioned, the
26 other Defendants have been officers, directors, and/or owners of
27 the sham corporation and have dealt with and treated the assets of
28 each sham corporation as their personal assets and their personal

1 assets as corporate assets; and have caused each sham corporation
2 to transfer certain assets to themselves for their personal
3 benefits.

4 b) Plaintiffs are informed and believe and thereon
5 allege that each of the individual Defendants, and each of the
6 corporate Defendants, formed and control each sham corporation to
7 conduct their business in accordance with their instructions and
8 directions without either the holding or calling of shareholders
9 or directors meetings; That each sham corporation has not issued
10 or given notice of issuance of capital stock to the Secretary of
11 State; That each sham corporation has been used and existed
12 solely for the purpose of permitting the other Defendants to
13 transact their personal business under a corporate guise; That
14 each sham corporation was and is the agent and instrumentality and
15 conduit through which the personal businesses of the other
16 Defendants were and are conducted.

17 c) At all times herein mentioned, each sham corporation
18 was held out by the other Defendants as a bona fide business
19 entity having the financial capability and responsibility
20 necessary to engage in business, but in truth and fact, the other
21 Defendants caused said sham corporation to be organized and
22 thereafter to conduct their business with capital which was and is
23 merely nominal in amount and wholly inadequate for the business in
24 which said corporation was engaged; That each sham corporation
25 did, in fact, conduct its business with capital which was the
26 personal property of the other Defendants; That each sham
27 corporation does not have sufficient money, property or
28 unencumbered assets to pay, at this time, its liability to

1 Plaintiffs herein, and is insolvent. That sham corporation was
2 utilized by other Defendants for their wrongful acts, as herein
3 sued upon.

4 d) Plaintiffs are informed and believe and thereon
5 allege the assets of the other Defendants, and each sham
6 corporation have been, for the purpose of defrauding the
7 Plaintiffs, transferred to other (both on-shore and off-shore)
8 entities, and so commingled as to hide and make the assets
9 indistinguishable from other assets.

10

11 9. Herein, whenever a cause of action alleges an intentional
12 wrong against an individual defendant, such acts of such defendant
13 were acts involving a breach of an obligation not arising from
14 contract, and were part and parcel of a common and continuous
15 pattern of misconduct, all done with fraud, ~~malice~~ malice and oppression,
16 in that such individual intended to cause injury to the Plaintiffs
17 and acted despicably with a conscious disregard for Plaintiffs'
18 rights or safety, and subjected the Plaintiffs to cruel and unjust
19 hardship in conscious disregard for Plaintiffs' rights, and/or
20 intentionally misrepresented, deceived and concealed material
21 facts known to such individual defendant, with the intention of
22 thereby depriving Plaintiffs of property or legal rights or
23 otherwise causing injury. Plaintiffs are therefore entitled to
24 punitive damages in a sum according to proof in addition to any
25 damage sums alleged for such causes of action.

26

27 10. Herein, whenever a cause of action alleges an
28 intentional wrong against a corporate defendant, such acts of such

1 defendant were acts involving a breach of an obligation not
2 arising from contract, and were done with fraud, malice and
3 oppression in that the officers, directors and/or managing agents
4 of such corporation, either personally or by the ratification of
5 the conduct of an employee of the corporation, intended to cause
6 injury to Plaintiffs and acted despicably with a conscious
7 disregard for Plaintiffs' rights, and/or intentionally
8 misrepresented, deceived or concealed a material fact known to
9 such corporate Defendant with the intention of depriving
10 Plaintiffs of property or legal rights and/or otherwise causing
11 injury. Plaintiffs are therefore entitled to punitive damages in
12 addition to any damage sums alleged for such causes of action.

13
14 11. Plaintiffs have complied with applicable provisions of
15 all laws or statutes, and given all notices, and made all demands,
16 which are prerequisites to the bringing and maintaining of this
17 action.

18
19 **JURISDICTION/VENUE**

20 12. This Court has jurisdiction over this matter pursuant to
21 28 USC §1332, because the amount in controversy exceeds \$50,000,
22 exclusive of interest and costs, and the parties are of diverse
23 citizenship. In addition, Federal court jurisdiction is exclusive
24 in this action because it includes a claim which is brought under
25 the Securities Exchange Act of 1934 [15 USC §78aa], and includes
26 claims for "manipulative or deceptive conduct" based on SEC Rule
27 10b-5 promulgated under the 1934 Act. Venue is proper in this
28 Court pursuant to 28 USC §1391(a). The parties to this action and

1 each of them have by former presence, formerly doing business in
 2 California, doing a substantial part of the acts, or omissions,
 3 giving rise to this claim, in California, by conduct causing a
 4 substantial part of the acts, events or effects in California, by
 5 having sufficient contacts with California, and/or consent and
 6 agreement are subject to, submitted to and/or subjected themselves
 7 to the jurisdiction and venue of the Court.

8 FIRST CAUSE OF ACTION
 9 BREACH OF CONTRACT
 (VS. ALL DEFENDANTS)

10 13. Plaintiffs repeat, re-plead, and reallege the allegations
 11 of paragraphs 1 through the immediately proceeding paragraph, as
 12 though set forth fully and incorporates them herein by reference.

13 SCHEDULE OF INVESTMENTS MADE

14	PRTNRSH	INVSTR	INVTMT	INVTMNT	MONTHLY	LATE	BAL	THRU
15			DATE	AMOUNT	PROFIT	PENALTY	DUE ¹	TO
16							DATE	
17	"AMP576"	J&P ²	11/21/96	\$300,000	\$199,500	\$19,950	\$1,957,050	1997 ³
18	"AMP577"	J&P	11/21/96	300,000	199,500	19,950	2,194,500	1997
19	"AMP704"	E&V TR ⁴	4/11/97	50,000	31,255	3,125	275,044	1997

21 _____
 22 ¹. Profit and penalty only - does not include return of
 23 principal.

24 ². Refers a 50/50 partnership of Papagni and Albion, Jointly
 and Severely.

25 ³. Through to end of December, 1997 - determined
 26 prospectively, based on the assumption the December, 1997 will be
 missed.

27 ⁴. Refers to Plaintiff EDDIE M. BACCHI & VIRGINIA M. BACCHI
 28 1991 LIVING TRUST, by Eddie M. Bacchi, Trustee (hereafter "Eddie
 Trust").

1	"AMP710" J&P	2/19/97	250,000	332,500 ⁵	33,250	3,291,750	1997
2	"AMP715" J&P	3/4/97	350,000	465,500 ⁶	46,500	4,608,450	1997
3	"AMP718" J&P	3/14/97	250,000	332,500 ⁷	33,250	3,291,750	1997
4	"AMP722" BWB TR ⁸	4/11/97	100,000	62,510	6,251	550,088	1997
5	"AMP725" W&T TR ⁹	4/11/97	50,000	31,255	3,125	275,044	1997
6	"AMP730" J&P	4/1/97	<u>37,500</u>	49,875 ¹⁰	4,987	<u>438,900</u>	1997
7			1,687,500			16,882,576	

8 14. THE AGREEMENTS. Plaintiffs allege that on or about the
9 dates specified on the following Schedule as the "investment dates,"
10 9 written agreements were made between Plaintiffs, and Defendants
11 (all acting via their agents Gilliland, and Hammersmith Trust).
12 Eddie Trust and Byron Trust both used ACCC to contract with
13 Defendants on behalf of their partnerships referred to herein as
14 "AMP704," and "AMP722"; William Trust used ACCC to contract with
15 Defendants on behalf of its partnership referred to herein as
16 "AMP725"; and Papagni and Albion used ACCC to contract with
17 Defendants on behalf of their partnerships referred to herein as
18 "AMP710," "AMP715," and "AMP730." Albion and Papagni also used FSMIC
19 to contract on behalf of their partnerships which are referred to
20 herein and known as "AMP576," and "AMP577." Each time ACCC or FSMIC

21 _____
22 ⁵. Per this agreement investor is entitled to 100% of profits.

23 ⁶. Another 100% profit agreement. (See fn #5.)

24 ⁷. Another 100% profit agreement. (See fn #5.)

25 ⁸. Refers to Plaintiff BYRON W. BACCHI IRREVOCABLE TRUST, by
26 Eddie M. Bacchi, Trustee (hereafter "Byron Trust").

27 ⁹. Refers to Plaintiff WILLIAM L. BACCHI & TERRI L. BACCHI
28 REVOCABLE TRUST, by William L. BACCHI, Trustee.

¹⁰. Another 100% profit agreement. (See fn #5.)

1 entered into a contract by which it invested a Plaintiff's money, it
2 was acting as an agent of that investing Plaintiff.

3

4 15. The essential terms of each agreement were the same, and
5 are as set out in the following paragraphs:

6 1) While acting as a General Partner in one, or more, of the
7 above listed partnerships each Plaintiff agreed to invest money with
8 Defendants, in the amounts shown on the following Schedule.

9 2) Defendants were required to deposit the investment funds into
10 an interest bearing "Paymaster Account" in a bank from which interest
11 was to be paid to the investor, and held there to support Defendants'
12 obtaining a loan or line of credit, in a matching amount;

13 3) Defendants were required to then "match" the Plaintiffs funds
14 with other funds of an equal amount, then the funds were to be used
15 (without removing said funds from the deposit account) to enable
16 Defendants to engage in an "investment program" to purchase "U.S.
17 Government Treasury Obligations" ("Obligation"). Each "Obligation,"
18 and "investment program," was to be "guaranteed as to principal,
19 interest, and yield and issued by a financial institution whose
20 securities are rated by Moody's in New York at A, or better";

21 4) Defendants were then required to deposit each Obligation
22 into a trust account (referred to as "Master Trading Account"), and
23 hold it in trust for, and on behalf of, and "for the sole ownership
24 of" Plaintiffs agent ACCC (or FSMIC), and "as further security for"
25 Defendants' performance of their duties to repay Plaintiffs'
26 investment[s]. Defendants were also required to secure each
27 investment: i) "by a promissory note"; ii) by an assignment of a
28 portion of the Paymaster Account"; iii) by deposit of documents with

1 ... numbers evidencing purchase of the obligation, with a bank, or
2 licensed securities dealer"; iv) by way of a Declaration of Trust
3 (establishing Defendants as Trustees of Plaintiffs); and v) by
4 requiring "at all times" the signatures of Plaintiffs, or their
5 agents, to the bank accounts identified above.

6 5) 13 months from the acquisition of the "Obligation" (or
7 sooner if requested by Plaintiffs) Defendants were required to repay
8 Plaintiffs their principal (and any profits still due) "without
9 deduction or abatement";

10 6) Each investment was for 13 months, but with profit payments
11 to be made monthly; and Defendants were required to pay ACCC (or
12 FSMIC) a monthly profit payment equal to 133% of the amount invested,
13 commencing no later than 6 weeks after the investment was made. (For
14 purposes of calculations of damages, each Plaintiff was then to be
15 paid, a sum equal to at least 66.5% [and in some instances 100%] of
16 the profit paid resulting from the amount invested.); and

17 7) In the event the profit was, for any reason, not paid within
18 10 calendar days of the due date, Defendants would be immediately
19 assessed, and pay a "late fee," or penalty, of 10% of the amount due.

20 16. Commencing on or about mid-April, 1997, and continuing
21 monthly each month thereafter, Defendants breached each of the
22 agreements, by the following acts, among others:

23 1) Defendants failed and refused to pay Plaintiffs the profits
24 due as a result of Plaintiffs' investments, as and when due.

25 2) Plaintiffs are informed believe and thereupon allege that
26 each investment was not deposited into an interest bearing "Paymaster
27 Account" in a bank, and the funds were not held there to support
28

1 Defendants' obtaining a loan or line of credit, in a matching amount.
2 Interest was not paid to us from the account;

3 3) Plaintiffs are informed believe and thereupon allege that
4 Defendants failed to then "match" Plaintiffs' funds with other funds
5 of an equal amount, then failed to use the funds (without removing
6 said funds from the deposit account) to enable Defendants to engage
7 in an "investment program" to purchase an Obligation";

8 4) Plaintiffs are informed believe and thereupon allege that
9 each "Obligation," and "investment program," was not "guaranteed as
10 to principal, interest, yield and issued by a financial institution
11 whose securities are rated by Moody's in New York at A, or better";

12 5) Plaintiffs are informed believe and thereupon allege that
13 Defendants failed to deposit each Obligation into a trust account
14 (referred to as "Master Trading Account"), and hold it in trust for,
15 and on-behalf of, and "for the sole ownership of" Plaintiffs, or
16 their agent ACCC (or FSMIC), and "as further security for"
17 Defendants' repayment obligation of the investment[s].

18 6) Plaintiffs are informed believe and thereupon allege that
19 Defendants also failed to secure each investment: i) "by a promissory
20 note"; ii) by an assignment of a portion of the Paymaster Account";
21 iii) by deposit of documents with ... numbers evidencing purchase of
22 the obligation, with a bank, or licensed securities dealer"; iv) by
23 way of a Declaration of Trust (establishing Defendants as Trustees
24 of Plaintiffs); and v) by requiring "at all times" the signatures of
25 Plaintiffs, or their agents, to the bank accounts identified above.

26 7) Profit payments were not made monthly to pay Plaintiffs or
27 their agents ACCC, or FSMIC, equal to 133% of the investment.
28 Although profits were not paid within 10 calendar days of the due

1 date, and Defendants were immediately assessed the "late fees," those
2 late fees have not been paid.

3 8) Although Plaintiffs have requested it, Defendants have
4 failed to repay Plaintiffs' principal (and profits due) "without
5 deduction or abatement," or at all. Defendants have anticipatorily
6 breached the agreement, and thus, Plaintiffs allege Defendants have
7 not, will not, and have no intention to repay the principal
8 investment "without deduction or abatement" as, and when, due.

9

10 17. Plaintiffs have performed all obligations to Defendants
11 except those obligations Plaintiffs were prevented or excused from
12 performing, and in doing so invested at least \$1,687,500 with
13 Defendants and each of them. (See SCHEDULE OF INVESTMENTS MADE.)

14

15 18. Plaintiffs suffered damages legally (proximately) caused
16 by Defendants' breaches of the agreements in a sum equal to those
17 amounts set forth on the above SCHEDULE OF INVESTMENTS MADE plus
18 interest at the legal rate, from the date due.

19

20 19. Plaintiffs are entitled to attorney fees by an agreement,
21 or a statute, in the sum of at least \$100,000, according to proof.

22

23 WHEREFORE, Plaintiffs pray for judgment as set forth below.

24

25 SECOND CAUSE OF ACTION
26 COMMON COUNTS
(VS. ALL DEFENDANTS)

27 20. Plaintiffs repeat, re-plead, and reallege the allegations
28 of paragraphs 1 through the immediately preceding paragraph, as

1 though set forth fully herein and incorporates them herein by
2 reference.

3
4 21. Plaintiffs allege that Defendants became indebted to
5 Plaintiffs within the last four years on an open book account for
6 money due, and because an account was stated in writing by and
7 between Plaintiffs and Defendants in which it was agreed that
8 Defendants were indebted to Plaintiffs.

9
10 22. Plaintiffs allege that Defendants became indebted to
11 Plaintiffs within the last two years for money paid, laid out, and
12 expended to, or for, Defendants, at Defendants' special instance and
13 request, and for money had and received by Defendants for the use and
14 benefit of Plaintiffs, for money paid to Defendants at the special
15 instance and request of Defendants, and for which Defendants promised
16 to pay Plaintiffs the sums above alleged, which are the reasonable
17 values thereof.

18
19 23. Therefore, the sums above alleged, which are the reasonable
20 values thereof, are due and unpaid despite Plaintiffs' demand, plus
21 prejudgment interest according to proof from the due date according
22 to proof.

23
24 24. Plaintiffs are entitled to attorney fees by an agreement
25 or a statute in the sum of at least \$100,000, according to proof.

26
27 WHEREFORE, Plaintiffs pray for judgment as set forth below.
28

THIRD CAUSE OF ACTION
FOR FRAUD AND MISREPRESENTATION
(VS. ALL DEFENDANTS)

1
2
3 25. Plaintiffs repeat, re-plead, and reallege the allegations
4 of paragraphs 1 through the immediately preceding paragraph, as
5 though set forth fully herein and incorporates them herein by
6 reference.

7
8 26. Plaintiffs allege that Defendants defrauded the Plaintiffs
9 as hereafter alleged.

10
11 27. Intentional Misrepresentations. On or about, and on
12 several occasions since, the dates set for the in the SCHEDULE OF
13 INVESTMENTS MADE, defendants, by Gilliland/Hammersmith intentionally
14 made representations of material facts by stating to the Plaintiffs,
15 and their agents, among other things, as follows:

16 a. Defendants knew of, and had an investment opportunity that
17 would pay "a guaranteed high rate of return." The investment was
18 safe and return of the funds was guaranteed because each investment
19 would be deposited into an interest bearing "Paymaster Account", and
20 held without removal, until used to repay Plaintiffs their
21 investment; He said:

22 "each investment was safe and return of the funds was
23 guaranteed because each investment would be deposited into
24 an interest bearing bank account, and held there, without
removal, until used to repay the investments" (or words to
that effect).

25 b) Plaintiffs were told if they invested, Defendants would
26 "hold [their] money in the deposit account, and use it to obtain a
27 loan or line of credit, in a matching amount"; Defendants would
28 "match our money" in an equal amount and without removing the funds

1 from the deposit account they would "go in an investment program and
2 purchase U.S. T-Bills." (or words to that effect.) At all times,
3 Plaintiffs were told Defendants would need Plaintiffs signatures (or
4 the signatures of their agents) to take the money from the bank
5 accounts identified above, or words to that effect. Gilliland said:
6 "Each investment program was guaranteed as to principal, interest,
7 and yield and issued by a financial institution whose securities are
8 rated by Moody's in New York at A, or better." (He later put this in
9 writing);

10 c) Gilliland said they "would deposit each T-Bill into a trust
11 account and hold it in trust for [Plaintiffs] as security." He said
12 Plaintiffs (or their agents) would "own" the T-Bill "as further
13 security for" our investments. "There was no way [Plaintiffs] could
14 lose because at any time all [they] had to do was cash in the T-
15 Bills, and be paid. He said Defendants would also back each
16 investment with a promissory note; and an assignment of a portion of
17 the Paymaster Account; by deposit of documents with evidence of the
18 purchase of the T-Bills. Investors would also get a "Declaration of
19 Trust" which made Defendants their "Trustees."

20 d) He said: Plaintiffs would be paid profit payments, monthly
21 equal to 133% of the amount invested, starting no later than 6 weeks
22 after wee invested. In the event the profit was, for any reason, not
23 paid within 10 calendar days of the due date, we would immediately
24 assess them, and they would pay a "late fee," or penalty, of 10% of
25 the amount due and unpaid. "No later than 13 months from the
26 acquisition of the T-Bill, (or sooner if we requested it) they would
27 repay us our investment principal."

28 e) To help convince Plaintiffs the investments were safe,

1 Gilliland said:

2 "Each Obligation, and each investment program, would to be
3 guaranteed as to principal, interest, and yield and issued
4 by a financial institution whose securities are rated by
Moody's in New York at A, or better." (He put this in
writing.)

5 "At, or before (if you request), the due date the total
6 investment (principal) would be repaid without deduction
or abatement to you, together with any profits still due."
7 (He also put this in writing.)

8 He said: "any time you wanted your investments back, all you have to
9 do is ask for them, and they will be repaid within 24 hours" (or
10 words to that effect).

11 28. When Plaintiffs expressed interest, Defendants drafted
12 written documents which contained representations that said:

13 a) Defendants would "match" the Plaintiffs funds with other
14 funds of an equal amount, then the funds would be used (without
15 removing said funds from the deposit account) to enable Defendants
16 to engage in an "investment program" to purchase a "U.S. Government
17 Treasury Obligation" ("Obligation"). Each "Obligation," and
18 "investment program," would be "guaranteed as to principal,
19 interest, and yield and issued by a financial institution whose
20 securities are rated by Moody's in New York at A, or better";

21 b) Defendants would deposit each Obligation into a trust
22 account ("Master Trading Account"), and hold it in trust for, and on
23 behalf of, and "for the sole ownership of" Plaintiffs' agent ACCC (or
24 FSMIC), and "as further security for" their repayment obligation of
25 the investment[s]. Defendants would also secure each investment: i)
26 "by a promissory note"; ii) by an assignment of a portion of the
27 Paymaster Account"; iii) by deposit of documents with ... numbers
28

1 evidencing purchase of the obligation, with a bank, or licensed
2 securities dealer"; iv) by way of a Declaration of Trust
3 (establishing Defendants as Trustees of Plaintiffs); and v) by
4 requiring "at all times" the signatures of Plaintiffs, or their
5 agents, to the bank accounts identified above.

6 c) 13 months from the acquisition of the "Obligation" (or sooner
7 if requested by Plaintiffs) Defendants would repay Plaintiffs their
8 principal (and any profits still due) "without deduction or
9 abatement";

10 d) Each investment was for 13 months, but with profit payments
11 would be made monthly; and Defendants would pay ACCC (or FSMIC) a
12 monthly profit payment equal to 133% of the amount invested,
13 commencing no later than 6 weeks after the investment was made. (Each
14 Plaintiff would then to be paid, a sum equal to 66.5 of the profit
15 paid resulting from the amount invested.) In the event the profit
16 was, for any reason, not paid within 10 calendar days of the due
17 date, Defendants would be immediately assessed, and pay, a "late
18 fee," or penalty, of 10% of the amount due and unpaid.

19 29. These facts were in fact false. The true facts were as
20 follows:

21 a. Defendants did not know of or have an investment
22 opportunity that would pay Plaintiffs a guaranteed high rate of
23 return. The alleged investments were not safe, and return of the
24 funds was not guaranteed. Each investment would not be deposited
25 into an interest bearing bank account, and held there, without
26 removal, until used to repay Plaintiffs their investment at the
27 "Termination Date;" Defendants intended to, and would, remove and
28

1 use the funds in contravention of the above representations.

2 b. The funds, even if held in the deposit account would not
3 be used to support Defendants' obtaining a loan or line of credit,
4 in a matching amount - Defendants never intended to, nor would they
5 ever obtain, nor produce, a "matching amount." The funds would not
6 be used (without removal from the deposit account) to engage in
7 "investment programs" to purchase U.S. Treasury Obligations;

8 c. the "Obligation[s]" would not be deposited by Defendants
9 into a trust account and held in trust for, and on behalf of,
10 Plaintiffs, and as security for Defendants' repayment obligation of
11 the investment[s];

12 d. The funds were not going to be repaid "without
13 deduction or abatement" 13 months after the investment was made.

14 e. Each "Obligation," and each "investment program," would
15 not be, and was not, "guaranteed as to principal, interest, and yield
16 and issued by a financial institution whose securities are rated by
17 Moody's in New York at A, or better."

18 f. Profit payments would not be made monthly, and paid to
19 Plaintiffs or Plaintiffs' agents, monthly, equal to 133% of the
20 amount invested. Each Plaintiff would not then be paid, a sum equal
21 to 66.5% of the profit paid resulting from the amount invested.
22 Defendants would never pay "late fees."

23 g. The total investments (principal) would not be repaid
24 "without deduction or abatement" to the Plaintiffs, together with any
25 profits still due, because Defendants intended to, and did, convert,
26 embezzle and misappropriate the funds to their own use.

27 h. The conduct and representations made by Defendants to
28 Plaintiffs, convincing Plaintiffs to give, and leave the funds

1 invested with Defendants, as alleged, was merely a part of a
2 conspiracy and artifice to defraud Plaintiffs out of their money;
3 Defendants' use, if any, of the funds was never intended to be to
4 engage in an "investment program" to purchase T-Bills at all; it was
5 never intended that Plaintiffs would receive the profits as
6 represented; there was no actual, or intended purchasing of interests
7 in Treasury Obligations, no "leveraging" of funds, and no profits to
8 be paid; no profits totalling 133% monthly; no guaranteed return of
9 funds to Plaintiffs - it was all a Ponzi scheme to defraud the
10 Plaintiffs out of their funds. Plaintiffs are informed that the only
11 "profits" ever allegedly paid were merely repayments to Plaintiffs
12 of a part of their investments, falsely labeled as "profits."

13

14 30. When Defendants made the representations, Defendants knew
15 they were false. Defendants intentionally made the representations
16 with the intent to defraud or induce Plaintiffs to act as described
17 herein. At the time Plaintiffs acted in reliance on the
18 representations, Plaintiffs did not know the representations were
19 false and believed they were true. Plaintiffs at all times
20 justifiably relied on and acted in justifiable reliance upon the
21 truth of the representations when Plaintiffs acted as herein alleged.

22

23 31. Fraudulent Concealment. In addition to the above, the
24 Defendants intentionally concealed or suppressed certain material
25 facts which the Defendants were bound to disclose and misled the
26 Plaintiffs by telling the Plaintiffs other facts to mislead and
27 prevent the Plaintiffs from discovering the concealed or suppressed
28 facts, including concealing the facts, among others known to the

1 Defendants but at this time unknown to the Plaintiffs, that the
2 representations set forth in Paragraphs 27 & 28 were false, and
3 telling the Plaintiff, in order to mislead the Plaintiffs, (among
4 other things known to the Defendants but at this time unknown to the
5 Plaintiffs), that the facts stated in these Paragraphs were true.

6
7 32. Defendants intentionally concealed or suppressed these
8 facts with the intent to defraud the Plaintiffs to act as described
9 herein. At the time the Plaintiffs acted, the Plaintiffs were
10 unaware of the concealed or suppressed facts and wouldn't have taken
11 the actions alleged if the Plaintiffs had known the true facts.

12
13 33. Promises Made Without intent to Perform. In addition to
14 the above, the Defendants intentionally made promises without intent
15 to perform as follows: The Defendants made the promises as are more
16 particularly set forth in the First Cause of Action, and in
17 Paragraphs 27 & 28, and made additional promises to the Plaintiffs,
18 in order to mislead the Plaintiffs, (which promises are at this time
19 known to the Defendants but unknown to the Plaintiffs).

20
21 34. The Defendants' promises were made intentionally, without
22 any intention of performance, and were made by Defendants with the
23 intent to defraud and induce Plaintiffs to rely upon them and to act
24 as herein alleged. At the time the Plaintiffs acted, Plaintiffs were
25 unaware of the Defendants' intentions not to perform the promises.
26 Plaintiffs justifiably relied and acted in justifiable reliance upon
27 the promises.

28

1 35. In justifiable reliance upon the Defendants conduct as
2 herein alleged, Plaintiffs were induced to give Defendants nearly
3 \$2,000,000 in funds that they would not otherwise have given them.
4

5 36. Plaintiffs suffered damages legally (proximately) caused
6 by Defendants' fraud and misrepresentation in a sum equal to the sums
7 reflected in SCHEDULE OF INVESTMENTS MADE, plus prejudgment interest
8 according to proof from the due date according to proof. Plaintiffs
9 are also entitled to exemplary damages in the sum of at least
10 \$25,000,000.

11 WHEREFORE, Plaintiffs pray for judgment against all Defendants
12 as set forth below.
13

14 FOURTH OF ACTION
15 FOR FRAUD AND NEGLIGENT MISREPRESENTATION
16 (VS. ALL DEFENDANTS)

17 37. Plaintiffs repeat, re-plead, and reallege the allegations
18 of paragraphs 1 through the immediately proceeding paragraph, as
19 though set forth fully herein and incorporates them herein by
20 reference.

21 38. Plaintiffs allege that Defendants negligently defrauded the
22 Plaintiffs as hereinafter alleged.
23

24 39. Negligent Misrepresentations. On or about, and on several
25 occasions since, the dates set forth in the SCHEDULE OF INVESTMENTS
26 MADE, Defendants Gilliland and Hammersmith Trust, orally and in
27 writing, negligently made representations of material facts as
28 alleged in Paragraphs 27 & 28 above.

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40. These facts were in fact false. The true facts were as alleged in paragraph 29 above.

41. When Defendants made the representations, Defendants had no reasonable reason to believe they were true. Defendants negligently made the representations with the intent to defraud or induce Plaintiff(s) to act as described herein. At the time Plaintiff(s) acted in reliance on the representations, Plaintiff(s) did not know the representations were false and believed they were true. Plaintiff(s) at all times justifiably relied on and acted in justifiable reliance upon the truth of the representations when Plaintiff(s) acted as herein alleged.

42. Plaintiffs suffered damages legally-(proximately) caused by Defendants' fraud and misrepresentation in a sum equal to the sums reflected in SCHEDULE OF INVESTMENTS MADE, plus prejudgment interest according to proof from the due date according to proof.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

FIFTH CAUSE OF ACTION
BREACH OF CONTRACT - THIRD PARTY BENEFICIARY
(VS. ALL DEFENDANTS)

43. Plaintiffs repeat, re-plead, and reallege the allegations of paragraphs 1 through the immediately proceeding paragraph, as though set forth fully herein and incorporates them herein by reference.

1 44. Plaintiffs allege that on the dates specified in the First
2 Cause of Action, written agreements were made between Defendants and
3 Plaintiffs, as alleged in the First Cause of Action. The essential
4 terms of the agreement are as alleged in the First Cause of Action.
5

6 45. The agreements were agreed by the Defendants, known by the
7 Defendants to be, and were intended to be for the direct benefit of
8 an identifiable and identified class of persons that included the
9 Plaintiffs, inclusive, among others.
10

11 46. Within four years last past, Defendants breached the
12 agreement by the acts as alleged above.
13

14 47. Plaintiffs, and the other parties (excepting the
15 Defendants) to the above referred to third party beneficiary
16 contracts, have performed all obligations to Defendants, except those
17 obligations Plaintiffs, and the others, were prevented or excused
18 from performing.
19

20 48. Plaintiffs suffered damages legally (proximately) caused
21 by Defendants' breach of the agreement according to proof at the time
22 of trial, but the sums as set forth above.
23

24 49. WHEREFORE, Plaintiffs pray for judgment as set forth below.

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SIXTH CAUSE OF ACTION
CONVERSION
(VS. ALL DEFENDANTS)

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3 50. Plaintiffs repeat, re-plead, and reallege the allegations
4 of paragraphs 1 through the immediately preceding paragraph, as
5 though set forth fully herein and incorporates them herein by
6 reference.

7
8 51. At all times herein relevant, Plaintiffs were and are the
9 owners, and entitled to immediate possession and control of their
10 investment moneys in the amount of nearly \$2,000,000. That money was
11 earmarked, and custody of the moneys was delivered over to the
12 Defendants for the express purpose of holding it in trust, placing
13 it into a secured/trust account for the limited and express purposes
14 alleged above, whereby Defendants would purchase interests in
15 Treasury Bills, and thereby Plaintiffs would receive the above
16 alleged guaranteed profit's on their investments.

17
18 52. On and after the dates the investments were made,
19 Defendants converted Plaintiffs' investment moneys to their own use.

20
21 53. Plaintiffs suffered damages legally (proximately) caused
22 by Defendants' fraud and misrepresentation in a sum equal to the sums
23 reflected in SCHEDULE OF INVESTMENTS MADE, plus prejudgment interest
24 according to proof from the due date according to proof. Plaintiffs
25 are also entitled to exemplary damages in the sum of at least
26 \$25,000,000.

27
28 WHEREFORE, Plaintiffs pray for judgment as set forth below.

SEVENTH CAUSE OF ACTION
FOR CONSTRUCTIVE TRUST
(AGAINST ALL DEFENDANTS)

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3 54. Plaintiffs repeat, re-plead, and reallege the allegations
4 of paragraphs 1 through the immediately proceeding paragraph, as
5 though set forth fully herein and incorporates them herein by
6 reference.

7
8 55. Due to the wrongful conduct by Defendants as alleged above,
9 defendants will be unjustly enriched if the agreement is not
10 enforced.

11
12 56. In order to prevent an unjust enrichment to the Defendants
13 at the expense of the Plaintiff beneficiaries, equity demands that
14 a constructive trust be impressed upon all Defendants' property,
15 making Defendants the constructive trustees for the Plaintiffs, to
16 carry forth terms of the agreement. Equity further demands that a
17 quasi specific performance be ordered, compelling the defendants to
18 transfer plaintiffs' investment moneys and earned profits over to the
19 plaintiffs. Equity also demands that the Court order the appointment
20 of a Receiver to take custody and control of the assets of the
21 Defendants and/or that the Court issue preliminary and permanent
22 injunctions, freezing the Defendants' assets and preventing their
23 removal from the reach and control of the Court, and to aid in the
24 enforcement of any Judgment.

25
26 WHEREFORE, Plaintiffs pray for judgment as set forth below.
27
28

EIGHTH CAUSE OF ACTION
VIOLATION OF SECURITY LAWS
(AGAINST ALL DEFENDANTS)

1
2
3 57. Plaintiffs repeat, re-plead, and reallege the allegations
4 of paragraphs 1 through the immediately proceeding paragraph, as
5 though set forth fully herein and incorporates them herein by
6 reference.

7
8 58. The offering of the investments, as alleged in the Causes
9 of Action above, was violative of Rule 10b-5 of the Securities and
10 Exchange Act of 1934, in that it was an offering to sell a security,
11 by means of written or oral communication through an instrumentality
12 of interstate commerce, which offering included an untrue statement
13 of material fact or omission of material fact, willfully made or
14 omitted, which caused the offering to be misleading.

15
16 59. Defendants, directly and indirectly, are now and have
17 engaged in, and unless restrained and enjoined by this Court will
18 continue to engage in, transactions, acts, practices, and courses of
19 business that violate Section 10(b) of the Securities Exchange Act
20 of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5
21 thereunder [17 C.F.R. §240.10b-5].

22
23 60. Defendants, directly and indirectly, are now, and have
24 engaged in, and unless restrained and enjoined by this Court will
25 continue to engage in, transactions, acts, practices, and courses,
26 of business that violate Section 17(a) of the Securities Act 1933
27 ("Securities Act") [15 U.S.C. §77q(a)].

28

1 61. Defendants, with scienter, in connection with the purchase
2 of sale of securities, by the use of means or instrumentalities of
3 interstate commerce or of the mails, directly or indirectly; (a)
4 employed devices, schemes, or artifices, to defraud; (b) made untrue
5 statements of material facts or omitted to state material facts
6 necessary in order to make the statements made, in the light of the
7 circumstances under which they were made, not misleading; or (c)
8 engaged in acts, practices or courses of business which operated or
9 would operate as a fraud or deceit upon purchasers of securities in
10 violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)]
11 and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

12
13 62. By reason of the foregoing, Defendants violated Section
14 10(b) of the Exchange Act and Rule 10b-5 thereunder and unless
15 restrained and enjoined and enjoined will continue to do so.

16
17 63. Defendants, with scienter, in the offer or sale of
18 securities, by the use of means or instruments of transportation or
19 communication in interstate commerce, or by the use of the mails,
20 directly or indirectly employed devices, schemes or artifices to
21 defraud in violation of Section 17(a)(1) of the Securities Act [15
22 U.S.C. §77q(a)(1)].

23
24 64. By reason of the foregoing, Defendants violated Section
25 17(a)(1) of the Securities Act and unless restrained and enjoined
26 will continue to do so.

27
28 / / /

1 65. Defendants, in the offer or sale of securities, by the use
2 of means or instruments of transportation or communication in
3 interstate commerce, or by the use of the mails, directly or
4 indirectly (a) obtained money or property by means of untrue
5 statements of material facts or omissions to state material facts
6 necessary in order to make the statements made, in the light of the
7 circumstances under which they were made, not misleading; or (b)
8 engaged in transactions, practices or courses of business which
9 operated or would operate as a fraud or deceit upon purchasers of
10 securities in violation of Sections 17(a)(2) and (3) of the
11 Securities Act [15 U.S.C. §77q(a)(2) and (3)].

12

13 66. By reason of the foregoing, Defendants violated Sections
14 17(a)(2) and (3) of the Securities Act and unless restrained and
15 enjoined will continue to do so.

16

17 67. As a proximate result of Defendants' conduct in converting
18 Plaintiffs' moneys, and violations of securities laws as above
19 alleged, Plaintiffs suffered damages legally (proximately) caused by
20 Defendants' breaches of the agreements in a sums as set forth above,
21 plus prejudgment interest according to proof from the due date
22 according to proof. Plaintiffs are also entitled to exemplary
23 damages in the sum of at least \$25,000,000.

24

25 WHEREFORE, Plaintiffs pray for judgment as set forth below.

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NINTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
(AGAINST ALL DEFENDANTS)

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68. Plaintiffs repeat, re-plead, and reallege the allegations of paragraphs 1 through the immediately proceeding paragraph, as though set forth fully herein and incorporates them herein by reference.

69. At all times relevant there existed a relationship of trust between Plaintiffs and Defendants whereby Plaintiffs reposed their trust and confidence on the promises, representations, actions, honesty, fidelity, and integrity of the Defendants, thereby creating a fiduciary duty owed by Defendants to Plaintiffs.

70. Defendants breached their fiduciary duties to Plaintiffs by committing the wrongful and tortious acts, as has been more specifically alleged in this complaint.

71. As a proximate result of Defendants' conduct in breaching their fiduciary duties to Plaintiffs, Plaintiffs suffered damages legally (proximately) caused by Defendants' breaches of the agreements in a sums as set forth above, plus prejudgment interest according to proof from the due date according to proof. Plaintiffs are also entitled to exemplary damages in the sum of at least \$25,000,000.

WHEREFORE, Plaintiffs pray for judgment as set forth below.

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TENTH CAUSE OF ACTION
TORTIOUS BREACH OF IMPLIED-IN-LAW COVENANT
OF GOOD FAITH AND FAIR DEALING
(AGAINST ALL CROSS-DEFENDANTS)

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72. Plaintiffs repeat, re-plead, and reallege the allegations of paragraphs 1 through the immediately proceeding paragraph, as though set forth fully herein and incorporates them herein by reference.

73. By virtue of the above referenced investment agreements, Defendants occupied a position of trust, and as a fiduciary to Plaintiffs. The above referenced agreements therefore, and also, contained the Implied-In-Law Covenant of Good Faith and Fair Dealing governing the conduct of the Defendants as between them and Plaintiffs. Pursuant thereto the Defendants were obligated to deal fairly and in good faith with Plaintiffs. Furthermore, Defendants were obligated not to do anything to unjustly deprive Plaintiffs of their benefits under the agreement.

74. Within one year last past Defendants knowingly and intentionally breached the Implied-in-Law Covenant of Good Faith and Fair Dealing in their investment agreements with Plaintiffs, by doing the things alleged above.

75. In doing the things alleged above, the Defendants acted willfully, fraudulently, maliciously, and oppressively, with conscious disregard of Plaintiffs' known rights, by despicable conduct with the intent to vex, annoy, harass and injure Plaintiffs warranting the imposition of exemplary damages.

TWELFTH CAUSE OF ACTION
CONSPIRACY
(AGAINST ALL DEFENDANTS)

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3 80. Plaintiffs repeat, re-plead, and reallege the allegations
4 of paragraphs 1 through the immediately proceeding paragraph, as
5 though set forth fully herein and incorporates them herein by
6 reference.

7
8 81. Defendants, and each of them, knowingly and willfully
9 conspired among themselves to commit the wrongful and tortious acts
10 alleged herein.

11
12 82. Within one year last past the filing of the original
13 Complaint in this action, Defendants, and each of them, committed
14 overt acts in furtherance of the conspiracy and thereby furthered the
15 conspiracy by cooperation with, lent aid and encouragement to, or
16 ratified and adopted the acts of their co-Defendants, in a manner at
17 this time unknown to Plaintiffs, but known to the Defendants, and
18 each of them.

19
20 83. In addition to the overt acts of the conspiracy alleged
21 herein, the conspiracy is ongoing to the present, and the most recent
22 overt acts in furtherance of the conspiracy are known to the
23 Defendants, and each of them, but at this time unknown to Plaintiffs.

24
25 84. As a proximate result of Defendants' conspiratorial
26 misconduct, Plaintiffs suffered damages legally (proximately) caused
27 by Defendants' breaches of the agreements in a sums as set forth
28 above, plus prejudgment interest according to proof from the due date

1 according to proof. Plaintiffs are also entitled to exemplary
2 damages in the sum of at least \$25,000,000.

3
4 WHEREFORE, Plaintiffs pray for judgment as set forth below.

5
6 THIRTEENTH CAUSE OF ACTION
7 FEDERAL RACKETEERING
8 VIOLATION OF R.I.C.O.
9 (AGAINST ALL DEFENDANTS)

10 85. Plaintiffs repeat, re-plead, and reallege the allegations
11 of paragraphs 1 through the immediately preceding paragraph, as
12 though set forth fully herein and incorporates them herein by
13 reference.

14 86. At all relevant times, Defendants are/were persons within
15 the meaning of 18 U.S.C. Section 1961(3), and/or are/were an
16 enterprise including individuals, partnerships, corporations,
17 associations, and groups of individuals associated in fact within the
18 meaning of 18 U.S.C. Section 1961(4)..

19 87. The Defendants, jointly and separately, are legal entities
20 capable of holding a legal or beneficial interest in property taken
21 as a result of or effected by the Defendants' misconduct; all were
22 employed by or associated with the enterprise; and all participated
23 in the conduct of the enterprise's affairs, directly and indirectly,
24 and were helpful to the operation of the enterprise.

25
26 88. The conduct herein alleged, and specifically the
27 conversions, the intentional misrepresentations and concealment
28

1 constitute a scheme and artifice to defraud, for obtaining money and
2 property by means of false and fraudulent pretenses, representations,
3 and promises. Defendants, while and for the purpose of executing
4 such scheme and artifice, placed mail matter in a depository for mail
5 matter of the U.S. Post Office, and engaged in activities that
6 affected interstate and/or foreign commerce.

7
8 89. By virtue of the above alleged intentional torts and
9 tortious acts committed in furtherance of the above alleged
10 conspiracy, Defendants have conducted the enterprise's affairs
11 through "a pattern of racketeering activity," within the meaning of
12 18 U.S.C. Section 1961 and 1962, and committed violations of the
13 Racketeering Influenced and Corrupt Organization ("RICO") Act,
14 including, but not limited to Section 1962(c) of title 18 of the
15 United States Code. Said pattern of racketeering activity has
16 consisted of, among other things, the following "predicate acts:"

17 a. The acts of fraud in connection with the solicitation
18 of investment funds from the Plaintiffs by the defendants and each
19 of them, as described above. (15 U.S.C. Section 77(a) et seq.); and

20 b. The acts of fraud in connection with the solicitation
21 of investment funds from Plaintiffs by the Defendants and each of
22 them, as described above (15 U.S.C. Section 78(a) et seq.)

23
24 90. The Defendants' participation were through a pattern of
25 racketeering activity, including, but not limited to, mail fraud in
26 violation of Section 1341 of Title 18, United States Code, consisting
27 of more than two mail fraud acts within ten years of this date, to
28 wit: Defendants, having intentionally devised a scheme and artifice

1 to defraud, for obtaining money and property by means of false and
2 fraudulent pretenses, representations, and promises, for the purpose
3 of executing such scheme and artifice placed mail matter in a
4 depository for mail matter of the U.S. Post Office.

5

6 91. The enterprise, and the conduct of the Defendants, affects
7 interstate or foreign commerce because Defendants are engaging in and
8 pursuing activities affecting commerce between the states and between
9 the states and foreign countries.

10

11 92. As a direct and proximate result of the Defendants'
12 racketeering activities herein alleged, Plaintiffs' investments funds
13 and profits have been lost and have been converted by Defendants, and
14 Plaintiffs have suffered damages legally (proximately) caused by
15 Defendants' breaches of the agreements in a sum as set forth above,
16 plus prejudgment interest according to proof from the due date
17 according to proof. Plaintiffs are also entitled to exemplary
18 damages in the sum of at least \$25,000,000.00. Pursuant to 18 U.S.C.
19 Section 1964(c) Plaintiffs are also entitled to treble damages and
20 attorney fees.

21

22 WHEREFORE, Plaintiffs pray for judgment as set forth below.

23

24

PRAYER

25

26

WHEREFORE, Plaintiffs pray for judgment against all
Defendants as follows:

27

28

1 ON FIRST, SECOND, FOURTH, FIFTH CAUSES OF ACTION

2 1. That Plaintiffs be awarded general and special damages
3 against Defendants and each of them in a sum equal to at least
4 \$1,687,500 in lost principal, and \$16,882,576 in lost profits
5 (increasing per the terms of the agreement from and after 1/1/98),
6 plus interest at the legal rate, from the date due.

7 2. That Plaintiffs be awarded their attorney fees incurred in
8 this action in the sum of at least \$100,000, according to proof.

9 ON THE THIRD, SIXTH, EIGHTH, NINTH, TENTH, TWELFTH, AND
10 THIRTEENTH CAUSES OF ACTION

11 1. That Plaintiffs be awarded general and special damages
12 against Defendants and each of them in a sum equal to at least
13 \$1,687,500 in lost principal, and \$16,882,576 in lost profits
14 (increasing per the terms of the agreement from and after 1/1/98),
15 plus interest at the legal rate, from the date due.

16 2. That Plaintiffs be awarded their attorney fees by an
17 agreement, or a statute, in the sum of at least \$100,000, according
18 to proof.

19 3. That Plaintiffs be awarded exemplary damages in the sum of
20 at least \$25,000,000.00.

21 ON THE SEVENTH CAUSE OF ACTION

22 1. In order to prevent an unjust enrichment to the Defendants
23 at the expense of the Plaintiff beneficiaries, a constructive trust
24 should be impressed upon all Defendants' property, making Defendants
25 the constructive trustees for the Plaintiffs, to carry forth terms
26 of the agreement.

27 2. The Court should order quasi specific performance compelling
28 the defendants to transfer plaintiffs' investment moneys and earned

1 profits over to the plaintiffs.

2 3. The Court should order the appointment of a Receiver to take
3 custody and control of the assets of the Defendants and/or that the
4 Court issue preliminary and permanent injunctions, freezing the
5 Defendants' assets and preventing their removal from the reach and
6 control of the Court, and to aid in the enforcement of any Judgment.

7 ON THE EIGHTH AND THIRTEENTH CAUSES OF ACTION

8 1. The Court should enter an injunction, preliminary during the
9 pendency of this action and permanently thereafter, restraining and
10 enjoining Defendants, their subsidiaries, officers, directors,
11 agents, servants, employees, and attorneys-in-fact, and all persons
12 in active concert or participation with them, and each of them, from
13 violating, directly or indirectly, Section 10(b) of the Exchange Act
14 and Rule 10b-5 thereunder.

15 2. Enter an injunction, preliminary during the pendency of this
16 action and permanently thereafter, restraining and enjoining
17 Defendants, their subsidiaries, officers, directors, agents,
18 servants, employees, and attorneys-in-fact, and all persons in active
19 concert or participation with them, and each of them, from violating,
20 directly or indirectly, Section 17(a) of the Securities Act.

21 3. Order Defendants and their officers, agents, servants,
22 employees, and attorneys, to disgorge all illegal gains, together
23 with prejudgment interest.

24 4. Order Defendants to pay civil money penalties pursuant to
25 Section 20(d) of the Securities Act [15 U.S.C. §77t(d)], Section
26 21(d) (3) of the Exchange Act [15 U.S.C. 78u(d) (3)], and Section 42(e)
27 of the Investment Company Act [15 U.S.C. §80a-41].

28

1 5. That Plaintiffs be awarded general and special damages
2 against Defendants and each of them in a sum equal to at least
3 \$1,687,500 in lost principal, and \$16,882,576 in lost profits
4 (increasing per the terms of the agreement from and after 1/1/98),
5 plus interest at the legal rate, from the date due.

6 6. Pursuant to 18 U.S.C. Section 1964(c) Plaintiffs are also
7 entitled to treble damages and attorney fees according to proof at
8 the time of trial but at least \$100,000.

9 7. Plaintiffs be awarded exemplary damages in the sum of at
10 least \$25,000,000.00.

11 **ON THE ELEVENTH CAUSE OF ACTION**

12 1. For an accounting of all monies received by Defendants from
13 Plaintiffs, showing what was done with it, where it went, and what
14 occurred to any returns;

15 2. For costs of suit incurred herein; and,

16 3. For such other relief as the Court may deem proper.

17 **AS TO ALL CAUSES OF ACTION**

18 1. That Plaintiffs be awarded their costs of suit against said
19 Defendants and each of them, according to proof;

20 2. For such other and further relief as the Court may deem just
21 and proper.

22 DATED: December 23, 1997

TERRY M. MOSHENKO
A Professional Law Corporation

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25 BY:


Terry M. Moshenko
Attorneys for Plaintiffs

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, declare: I am the Plaintiff in the above entitled action; I have read the foregoing VERIFIED COMPLAINT FOR:
1. BREACH OF CONTRACT 2. COMMON COUNTS 3. FRAUD AND MISREPRESENTATION 4. FRAUD AND NEGLIGENT MISREPRESENTATION 5. BREACH OF CONTRACT THIRD PARTY BENEFICIARY 6. CONVERSION 7. CONSTRUCTIVE TRUST 8. VIOLATION SECURITY LAWS 9. BREACH OF FIDUCIARY DUTY 10. TORTIOUS BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING 11. ACCOUNTING 12. CONSPIRACY 13. FEDERAL RACKETEERING VIOLATION OF R.I.C.O. and know the contents thereof; and the same is true of my knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I certify (or declare) under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed at Mountain View, California.


JOHN PAPAGNI

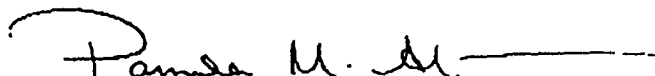
VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, declare: I am the Plaintiff in the above entitled action; I have read the foregoing VERIFIED COMPLAINT FOR:
1. BREACH OF CONTRACT 2. COMMON COUNTS 3. FRAUD AND MISREPRESENTATION 4. FRAUD AND NEGLIGENT MISREPRESENTATION 5. BREACH OF CONTRACT THIRD PARTY BENEFICIARY 6. CONVERSION 7. CONSTRUCTIVE TRUST 8. VIOLATION SECURITY LAWS 9. BREACH OF FIDUCIARY DUTY 10. TORTIOUS BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING 11. ACCOUNTING 12. CONSPIRACY 13. FEDERAL RACKETEERING VIOLATION OF R.I.C.O. and know the contents thereof; and the same is true of my knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I certify (or declare) under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed at Mountain View, California.


PAM ALBION

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, declare: I am the Plaintiff in the above entitled action; I have read the foregoing VERIFIED COMPLAINT FOR:
1. BREACH OF CONTRACT 2. COMMON COUNTS 3. FRAUD AND MISREPRESENTATION 4. FRAUD AND NEGLIGENT MISREPRESENTATION 5. BREACH OF CONTRACT THIRD PARTY BENEFICIARY 6. CONVERSION 7. CONSTRUCTIVE TRUST 8. VIOLATION SECURITY LAWS 9. BREACH OF FIDUCIARY DUTY 10. TORTIOUS BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING 11. ACCOUNTING 12. CONSPIRACY 13. FEDERAL RACKETEERING VIOLATION OF R.I.C.O. and know the contents thereof; and the same is true of my knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe it to be true.

I certify (or declare) under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed at Reno, Nevada.


VIRGINIA M. BACCHI 1991 LIVING TRUST, by Eddie Bacchi, Trustee