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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 23 2007



11 Attorneys for Plaintiff & Petitioner,
12 **KENNETH DUTTON**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF RIVERSIDE**

15 **KENNETH DUTTON,**
16 **and similarly situated persons,**
17 **in the public interest,**

18 **Plaintiff/Petitioner,**

19 **vs.**

20 **PACIFIC WEALTH MANAGEMENT,**
21 **LLC; JAMES DUNCAN; MAURICE**
22 **McLEOD; HENDRIX MONTECASTRO;**
23 **and DOES 1 through 100, inclusive,**

24 **Defendants/Respondents.**

CASE NO. RIC 476169

**COMPLAINT FOR UNFAIR
BUSINESS PRACTICES,
INVESTMENT FRAUD, and
FRAUDULENT CONVEYANCE**

[CLASS ACTION COMPLAINT]

25 ***Plaintiff and Petitioner, KENNETH DUTTON, on behalf of himself and others similarly***
26 ***situated, hereby petitions and alleges as follows:***

- 27 1. KENNETH DUTTON ("INVESTOR") is a resident of Tucson, State of Arizona. DUTTON
28 is similarly situated to at least 800 other nationwide victims of the Defendants' fraud or
related entities, as alleged herein, including but not limited to approximately 100 persons or
more in Arizona. Each of the victims has suffered as a result of racketeering and conspiracy
to defraud by the Defendants and each of them.
2. Counsel for Plaintiff also represents the similar legal interests/claims of the following victims
("Plaintiffs") aside from KENNETH DUTTON, who brings this action on behalf of himself

1 and similarly situated persons:

2 a. California Residents: Ricardo & Aileen Ramirez, Ricardo & Marisa Aguilar, Rosie
3 Acedillo, Beverly Lau, Milo & Rowena Zabala, Jamie & Eunice De Leon, Jonas &
4 Lissa De Leon, Jose & Maria Ramirez, Rudy Tapia, Leslie Rillamas, Vicky Reiss,
5 Mark & Anna Richter, Hermann & Deborah Weber, Brian Hendley, Jim Kabellis,
6 Elsa & Bernardo Cabrales, Arnulfo & Evelyn Capacio, Eduardo & Soledad Carillo,
7 Mercy R. Ferido, Gerry & Cynthia Giron, Norma & Loida Imperial, Steve & Janet
8 Lanuzo, Sofia Lindayag, Percelito & Cleofe Delos Santos, Jeffrey & Chat Rice,
9 Loreto & Charito Cruz, and other affected California victims for whom class
10 membership and/or joinder is and will be sought for these victims.

11 b. Arizona Residents: Cynthia Dutton, Jerry & Lydia Peltier, Mario & Lydia Garcia,
12 Edwin & Rosemarie DeGuzman, Maria Hynum, Ramon Pedrego, Mercy & Joe
13 Rocha, Randy Winkles, and other affected Arizona or out-of-state victims for whom
14 class membership and/or joinder is and will be sought for these victims.

15 3. The tortious and overtly illegal conduct, which forms the basis of this complaint, occurred
16 or originated within this judicial district and all Defendants are alleged to be residents of
17 Riverside County, California.

18 4. The oral contracts, made within the last two years with Plaintiffs and potential class
19 members, were to be performed by Defendants within this judicial district. Written
20 contracts, made within the last four years with Plaintiffs, were to be performed by
21 Defendants within this judicial district. The pattern of racketeering activity described below
22 has taken place within the last ten years. Lastly, fraudulent transfers as described below were
23 executed within the last four years.

24 5. Each of the Defendants conspired with the other Defendants to steal money from the
25 Plaintiffs and to engage in a pattern of fraud and illegal conduct designed to induce Plaintiffs
26 to “invest” with the Defendants. While actually required for the activities engaged in by
27 Defendants, Defendants have no investments license(s) that allow(s) them to engaged in
28 “investment” activity on behalf of “clients” such as Plaintiffs. Simply stated, Defendants are

1 scam artists. Each Defendant was and is an agent, principal, representative, employee, or
2 partner or the others. While Defendants have publicly stated that victims, such as those
3 referenced above, were simply “unhappy” with the outcome of “investments,” the defendants
4 never had any legal right to offer “investments” or unregistered securities in California or
5 Arizona in the first place. Furthermore, profits from the illicit activities of the Defendants
6 were invested in the Defendants’ enterprise for the purpose of building and even larger base
7 of victims than is described in this complaint,

8 6. DOES 1 through 100 are persons or entities whose identities and true capacities are not
9 reasonably known to Plaintiffs at this time. Once the true names and capacities of these
10 defendants are known, the Plaintiffs will file a DOE Amendment as permitted by law.

11 7. The conduct described in this complaint was malicious, fraudulent, and oppressive within
12 the meaning of *California Civil Code* §§ 3294-3295. Moreover, each of the plaintiffs
13 referenced herein was actually damaged as a result of the conduct of the Defendants.

14 **THE PARTIES**

15 8. Plaintiffs, and each of them, as named in the caption or referenced in Paragraph 2a-b above,
16 were “investors” in PACIFIC WEALTH MANAGEMENT, LLC, a Nevada company
17 operated by Defendants, and each of them. Defendant MAURICE McLEOD set up PACIFIC
18 WEALTH MANAGEMENT LLC, a Nevada Corporation (“PWM” or “PACIFIC
19 WEALTH”), as a sham corporation. JAMES DUNCAN was the day-to-day supervisor over
20 the activities of PWM and MCLEOD took direct orders from DUNCAN at all relevant times.
21 MCLEOD and DUNCAN only intended to operate PWM for so long as they and the other
22 Defendants could get away with defrauding Plaintiffs and others. Once PWM would
23 foreseeably be caught in the act of committing fraud, as described below, PWM was intended
24 to be shut down by Defendants in or about November of 2006. The plaintiff-investors from
25 Arizona and California were never told about this intentional scheme of the Defendants.

26 9. JAMES DUNCAN is an unlicensed “investment advisor” who resides in the City of
27 Murrieta, County of Riverside. He is presently under order of the States of Washington,
28 Iowa, and Wisconsin to cease and desist in the sales of securities, investments, or related

1 transactions. He is a professional perpetrator of fraud on the investing public and is the
2 subject of multiple criminal and regulatory investigations. This is because he has stolen
3 money from other “investors” and is an intentional perpetrator of massive fraud throughout
4 the United States. He truly believes that he is impervious to the law. He, or persons related
5 to his business operations, are the subject of two separate restraining orders by the Riverside
6 County Superior Court as well. DUNCAN also heads up a shell company known as Total
7 Return Fund, LLC (“TRF”). TRF is an unlicensed “investment” firm that offers securities
8 within the State of California and other states. TRF is nothing but a scam and also offers
9 fake commodities interests, securities interests, bridge loans, and real estate interests for
10 investment by innocent victims. Many of the plaintiffs were fraudulently induced to transfer
11 title to their homes and “investment” properties to TRF within the last year. TRF then
12 represents itself as holding the properties as “investments” for other victims and offers
13 secured investment interests in the properties held as an alleged REIT. DUNCAN lives a
14 lavish lifestyle and is known to travel to Las Vegas, with the money of fraud victims, and is
15 alleged to spend the victims’ money on soirees with women, extravagant hotel arrangements,
16 and other abuses of the “capital contributions” of victims. All Defendants work at the
17 behest, orders, under the supervision and control of, and direction of JAMES DUNCAN.
18 Each has assisted in perpetrating the fraud on the plaintiffs.

19 10. MAURICE McLEOD is an unlicensed “investment advisor” who is the head of Defendant
20 PACIFIC WEALTH MANAGEMENT, LLC. (“PWM”). McLEOD has been restrained by
21 Department 2 of this Court from engaging in investment business under the name of PWM.
22 Much like DUNCAN, McLEOD is a hustler who steals money from innocent “investors” and
23 rewards himself with a lavish lifestyle. He resides in Murrieta as well. McLEOD and
24 DUNCAN conspired together to steal the name and trade usage of the name “Pacific Wealth
25 Management, LLC” which is a legitimate SEC-registered investment company in San Diego,
26 California.

27 11. HENDRIX MONTECASTRO is an unlicensed “investment advisor” who is the head of
28 Defendant STONEWOOD CONSULTING, INC. (“STONEWOOD”), a California

1 corporation. MONTECASTRO has been restrained by Department 2 of this Court from
2 engaging in investment business under the name of PWM. Much like DUNCAN,
3 MONTECASTRO is a hustler who steals money from innocent “investors.” He resides in
4 Murrieta as well. MONTECASTRO is a middle-tier perpetrator of the fraud which was the
5 product of a larger conspiracy by JAMES DUNCAN. MONTECASTRO recently lost his
6 real estate license with the California Department of Real Estate because of the fraudulent
7 activities described herein. Each of the allegations by the DRE as against MONTECASTRO
8 were true and correct. MONTECASTRO lives a lavish lifestyle and is known to travel to
9 Las Vegas, with the money of fraud victims, and is alleged to spend the victims’ money on
10 soirees with women, extravagant hotel arrangements, and other abuses of the “capital
11 contributions” of victims.

12 12. The following companies are alter-egos of the Defendants and are not validly established,
13 operated, or maintained, as a matter of corporate or partnership law:

| | |
|--------------------------------|----------------------------|
| 14 Stonebridge Credit Repair | Arbor Terrace Real Estate |
| 15 Jovane Investments | Golden Wealth Management |
| 16 Diamond Asset Management | Jovane Investments |
| 17 Ridgeline Equity | Stonewood Partners |
| 18 Stonewood Consulting | Repair My Credit Score |
| 19 Code Blue Financial Systems | Danask Rose LLC |
| 20 Sunburst Financial Systems | Oetting Enterprises |
| 21 Capital Resource Network | All Care Nursing |
| 22 Ledesco Development | The Henson Group |
| 23 ECWC Wrangler LLC | Cathedral Capital Partners |
| 24 Arbor Terrace Real Estate | Ocean Ridge Equity |
| 25 New World Mortgage | Pacific Blue Insurance |
| 26 Total Return Fund, LLC | Palm valley Advisors |
| 27 Inland Coast Capital | Coast Wealth Management |
| 28 James Duncan & Associates | |

1 13. The aforementioned sham companies referenced in Paragraph 12, and others, are set up by
2 the Defendants for the express purpose of making litigation impossible, making litigation too
3 costly for plaintiffs, and for the further purpose of handling/laundrying fraudulent
4 conveyances by the Defendants. None of these “businesses” abide by normal corporate
5 formalities, do not maintain regular minutes or meetings, do not avoid self-dealing, and are
6 not viable entities as a matter of law and cannot be served because they are sham
7 corporations. Defendants intentionally set these companies up as alter-egos for the express
8 and exclusive purpose of being able to avoid liability and to create a “moving target” for
9 Plaintiffs and law enforcement. Once the Defendants are done with making use of the
10 companies for laundrying ill-gotten gains from the victims of their fraud, they simply
11 abandon these companies and set up new ones.

12 14. Defendants, and each of them, are alleged to have violated California and federal law by
13 receiving income, both directly and indirectly, from activities relating a vast real estate and
14 currency fraud scam whereby defendants had a team of appraisers, loan underwriters, real
15 estate agents, and unlicensed investment “advisors” induce victims (including the plaintiffs)
16 to take out *all* equity in their homes to invest in Iraqi dinars, unnamed stocks, and other
17 “investments.” Other victims were induced to engaged in cash-only transactions and others
18 were induced to buy multiple properties that are now in foreclosure. The fraud of the
19 Defendants occurred between November 2004 and the present day. Each of the plaintiffs
20 were lured into Defendants’ fraudulent scheme by being invited to attend investment
21 opportunity conferences held in Tucson, Arizona, and elsewhere.

22 15. The alleged “investments” were never delivered to Plaintiffs as promised, and the defendants
23 stole money taken from plaintiffs and as many as 800 or more other investors in California,
24 Arkansas, Puerto Rico, Arizona, Texas, Oregon and Washington.

STATEMENT OF FACTS

APPLICABLE TO ALL CAUSES OF ACTION

27 16. In fall of 2004 and thereafter, members of the Plaintiff-class joined an alleged investment
28 group based out of Murrieta and operated by Defendants DUNCAN, MCLEOD &

1 MONTECASTRO. These persons' company, PACIFIC WEALTH MANAGEMENT,
2 allegedly arranges for the public to invest in real estate, precious metals, stock/investment
3 accounts, and Iraqi currency. These specific types/descriptions of investments were
4 announced at various investor meetings, seminars, phone calls, and writings described below.
5 Most representations were mostly verbal in a seminar format at the locations alleged below.
6 As indicated above, PWM, nor its principals, have a valid investments license allowing them
7 to offer such opportunities.

8 17. Between Fall 2004 and late 2006, MAURICE McLEOD, JAMES DUNCAN, and HENDRIX
9 MONTECASTRO came in contact with members of the Plaintiff-class through telephone
10 conversations, seminars, private meetings, and through e-mail. It was these Defendants'
11 unstated intention to acquire confidential financial information from members of the
12 Plaintiff-class, including DUTTON, and the others represented by counsel herein, including
13 their social security numbers, employment information, and other private data. Defendants
14 regularly used a company by the name of Acranet to acquire this information. Defendants
15 did not tell Acranet that the information was being pulled for illegal purposes.

16 18. At the times they came in contact with DUTTON and other class members in or around
17 2005-2006, it was all Defendants' unstated intention to immediately use such private
18 financial information to steal the identity of the members of the Plaintiff-class, to use their
19 information to open credit lines without prior permission, and to steal the money acquired
20 from such credit lines. The defendants did exactly this. None of these facts were disclosed
21 to members of the Plaintiff-class, including DUTTON, and these are facts, had members
22 knows of their true nature, which would have caused them to cease any relationship with the
23 Defendants. Plaintiffs gave such information to the Defendants under the pretext that the
24 Defendants were legitimate investment and real estate advisors. Plaintiffs did not know that
25 information would be used to commit identity theft or for the purpose of committing fr

26 19. In or about 2005 and 2006, the Defendants (PWM, MONTECASTRO, DUNCAN and
27 McLEOD), induced Plaintiff-class members to fill out uniform residential loan applications
28 by representing to them that they would be buying "investment properties" in California

1 (especially in Southwest Riverside County) and elsewhere in approximately late 2005
2 through the present day. The Defendants then took the private financial data received from
3 Plaintiff-class members in or about 2005 through 2007, and unlawfully used the data to apply
4 for secured and unsecured credit without the permission of the Plaintiff-class members. The
5 Defendants then took money acquired from such credit lines, issued in the names of members
6 of the Plaintiff-class in 2004-2007, through wire transfers to shell companies of the
7 Defendants. All told, the Defendants scammed Plaintiff's lenders out of an amount far in
8 excess of \$1,000,000.00 through the improper use of Plaintiff's financial data given to the
9 Defendants while they were acting in a fiduciary capacity with the Plaintiff.

10 20. The investment group, known as PACIFIC WEALTH MANAGEMENT was created in or
11 about November 2004, by Defendants JAMES DUNCAN, HENDRIX MONTECASTRO,
12 and MAURICE McLEOD for the sole purpose and with the intent to do nothing else but steal
13 money from innocent investors under the guise of purported legitimate investment
14 opportunities. This fact was not disclosed by the Defendants to the Plaintiff-class members
15 or similarly situated persons. Had Plaintiff-class members known that the Defendants
16 intended on stealing identities and engaging in unauthorized use and distribution of private
17 financial data, they would not have done business with PWM.

18 21. At all times since 2004, that members of the Plaintiff-class had "investments" with PACIFIC
19 WEALTHMANAGEMENT, and other shell companies created by the individual defendants
20 were not licensed securities firms, licensed financial institutions, licensed financial advisors,
21 or licensed currency brokers within the United States or California. These facts were not
22 disclosed to the Plaintiff from November 2004 through Winter 2006. Had class members
23 known of these facts, they would not have invested money with the Defendants.

24 22. DUNCAN, MONTECASTRO and McLEOD are not licensed to offer securities, investment
25 advice, commodities, or related financial advice in California and it was always their intent
26 to mislead "investors" into believing that they had the authority to render investments advice
27 and investment offerings. These are material facts which were never disclosed to DUTTON
28 or those similarly situated to him, during 2004-2007, or other potential investors, before

1 investing in the “investment group” and which any reasonable investor would have wanted
2 to know about before investing their money with the Defendants (as the Defendants were in
3 a fiduciary relationship with Plaintiff). Had Plaintiffs known of these facts, they would not
4 have invested any money with the Defendants.

5 23. The investment group operated by the Defendants commonly lured investors by sponsoring
6 sales and information meetings at various hotels in Tucson. Defendants also infiltrated the
7 church of Plaintiff-class member Randy Winkles through meetings and visits with church
8 members in or about 2005-2006. Plaintiff-class members attended such meetings and were
9 induced by MONTECASTRO, or those working with him, to believe that these investment
10 seminars were being conducted by legitimate investment advisors. At no time during any
11 such contacts, in 2005-06, did the Defendants disclose that they had no legal right to offer
12 investments.

13 24. At the Tucson-area meetings in 2005 and thereafter, HENDRIX MONTECASTRO, JAMES
14 DUNCAN, MAURICE McLEOD and others would get potential investor-victims excited
15 about investing and would give the live testimonies of allegedly successful investors (some
16 of whom worked with the new inductees).

17 25. The seminar-type representations during this time period included verbal/oral claims by
18 DUNCAN, HENDRIX MONTECASTRO, and MAURICE McLEOD that “300% returns
19 on investments” would be made within 3 years and other similar claims. It was not revealed
20 that these were not lawful investments and that the Defendants actually intended on stealing
21 any money received from the persons, including Plaintiff, that were listening the sales pitch
22 of the Defendants. JAMES DUNCAN, HENDRIX MONTECASTRO, and MAURICE
23 McLEOD planned, scripted, and orchestrated all such meetings and dictated the content of
24 the speeches made by them to investors. Based on the representations made to class
25 members by the Defendants at these seminars, Plaintiffs relied on the ostensible experience,
26 results, and promises made by the Defendants as mentioned. Had Plaintiffs known of the
27 true facts, they would not have invested money with the Defendants.

28 26. The sole but unstated purpose of these investor meetings in Tucson was to have potential

1 investors become involved in the fraudulent schemes of the Defendants.

2 27. McLEOD, MONTECASTRO and DUNCAN all knew, but did not disclose, they were not
3 personally licensed to offer commodities, securities or other regulated investments in
4 California or Arizona and failed to disclose this material fact to DUTTON and other
5 investors before taking their money for alleged investment purposes. The fact that these
6 named Defendants were not licensed to offer investment advice is a material fact which any
7 investor would have wanted to know before investing their money with the Defendants.
8 McLEOD, MONTECASTRO and DUNCAN concealed these facts from DUTTON and other
9 investors for the sole purpose, and with the intent of, inducing them to turn over thousands
10 of dollars to Defendants which Defendants represented would go towards alleged legitimate
11 investment opportunities which would provide returns ranging from 18-300% over various
12 terms. DUNCAN also failed to disclose to DUTTON and other investors the fact that he was
13 previously involved with a fraud associated with companies known as Sunburst Financial
14 Systems out of the Palm Desert area of Southern California.

15 28. Wanting to know that one's alleged "investment advisor" was previously engaged in a fraud
16 relating to various investment activities is a material fact which any reasonable investor
17 would have wanted to know before investing their money with DUNCAN. All of these
18 concealments by McLEOD, MONTECASTRO, and DUNCAN were not readily known to
19 DUNCAN and other investors and could not have been reasonably ascertained by them. In
20 fact, as of mid-2005, other investors had been inquiring of PACIFIC WEALTH, DUNCAN,
21 MONTECASTRO, and McLEOD as to whether they were licensed to operate an investments
22 firm. DUNCAN and his associates (including McLEOD) represented that they were in fact
23 the same Pacific Wealth Management from San Diego, California, that sued McLEOD and
24 PACIFIC WEALTH and obtained an injunction against the same from Department 2 of this
25 Court.

26 29. By fall of 2006, DUNCAN, MONTECASTRO and McLEOD all knew that their alleged
27 investment activities, which DUTTON and others were involved in, were being investigated
28 by the FBI, Riverside DA, and various other agencies, including the SEC. This fact was

1 never disclosed to DUTTON and other investors and was purposively concealed from them
2 in order to further bleed out more money from DUTTON and other victims. Given the fact
3 that DUTTON and other investors have invested money with Defendants for alleged
4 investment opportunities, including DUNCAN, MONTECASTRO and McLEOD,
5 Defendants owed a fiduciary duty to DUTTON and other investors to disclose to them that
6 their investment activities, which involved DUTTON and other investors' money, were being
7 investigated by various law enforcement agencies. This fact was not readily known to
8 DUTTON and other investors and could not have been reasonably ascertained by them.

9 30. At all times, DUTTON and other investors justifiably relied on the representations and
10 conduct of the Defendants by investing money with the Defendants for alleged legitimate
11 investment opportunities. The representations and conduct of Defendants caused DUTTON
12 and other investors to cash out all open lines of credit, pay the proceeds to PACIFIC
13 WEALTH (whose main principals and agents were DUNCAN, MONTECASTRO and
14 McLEOD) and other related defendants, or face imminent foreclosure on properties which
15 were in DUTTON's name and which Defendants promised to pay the difference between the
16 rent and the amounts actually owed on first and second mortgages taken out against the
17 property. These promises were made verbally over the phone on dozens of occasions by
18 MONTECASTRO, McLEOD, and DUNCAN, either personally or through one of their
19 employees (including one Bridgette Holbrook, Linda Brooks, Chris Mosqueda, and others).

20 31. Moreover, Defendants promised to "manage" the victims' "investment" properties which are
21 now facing foreclosure and which have wreaked havoc on the credit scores of DUTTON and
22 other investors. DUTTON and other investors, at all times, did not possess, and could not
23 reasonably possess, the knowledge, training, skills, information, or facts necessary to
24 determine the real truth behind what the Defendants were doing (i.e., that the Defendants,
25 including the individual Defendants, were operating a Ponzi scheme and were unlicensed
26 "financial/investment advisors").

27 32. In sum, the fraud committed by the Defendants, from November 2004 to the present day,
28 consists of making false representations in writing (by e-mail), verbally (at seminars), and

1 telephonically to investors that the Defendants will invest money in 3-month, 1-year, and 3-
2 year investments with returns ranging from 18-300% over various terms. These promises
3 were false and the Defendants never intended on performing on the same. The intent not
4 to perform was not communicated to the Plaintiff.

5 33. At the time the representations were made by the Defendants, they knew the representations
6 to be absolutely false. Defendants never intended on providing the promised returns and,
7 rather, always intended on stealing the money being forwarded to them by DUTTON and
8 other victims.

9 CLASS ALLEGATIONS

10 34. There are ostensibly over 800 other investors who were brought into the scheme of the
11 Defendants within the last three calendar years. The inflation of home values, fraudulent
12 appraisals, fraudulent loan applications, effects on credit histories of victims, foreclosures,
13 and other deleterious effects will severely damage DUTTON and the other investors affected
14 by Defendants' egregious conduct as herein described. There may be as many as 5,000
15 loans, and/or loan purchase transactions by other lenders affected by this matter. This is
16 because married couples were typically qualified for the purchase of 8-10 homes by/through
17 PWM and single investors or those without willing spouses would qualify for 2-5 homes by
18 PWM.

19 35. The activities of PACIFIC WEALTH and their representatives/agents (DUNCAN, McLEOD,
20 and HENDRIX MONTECASTRO) are essentially a Ponzi scheme whereby those "investors"
21 who came in early in 2003 profited some from the activities and the newer investors,
22 including DUTTON, are paying for the mortgage obligations of the older investors. New
23 victims are alleged to have been brought in at meetings in just the last 60 days.

24 36. During November 2004 to the present day, MONTECASTRO, McLEOD and DUNCAN,
25 have worked to "help" investors purchase hundreds of properties at above-value prices. In
26 some cases, investment home values were inflated by 20-30%. Sellers would be offered this
27 inflated price and would unknowingly give a kickback to Defendants in escrow as a
28 "commission." The real estate lenders affected by this were loaning more money than what

1 was needed on the transactions alleged herein. Moreover, PWM, through a company known
2 as Stonewood Consulting, was paid commissions far in excess of normal rates in final
3 escrow. The Plaintiff-class victims did not think they were paying commissions. They
4 thought the commissions were excess proceeds being used for direct investment with PWM.

5 37. Stonewood Consulting, an alter-ego company of the Defendants, arranged for appraisers who
6 would inflate the value of homes purchased by Plaintiff-class members and charge, in some
7 cases, 10 times more than the appraisal should cost. Such monies would come out of escrow
8 and Defendants and their corrupt appraisal teams would benefit directly to the detriment of
9 the “investment group.”

10 38. All told, the “investors” in DUTTON’ group never see any of the excess proceeds (i.e.,
11 investment monies) from any of the fraudulent sales described above. Moreover,
12 Defendants, through Stonewood/PWM, would later refinance the homes for the victims and
13 keep the proceeds from second trust deed loans for “investments” with PACIFIC WEALTH
14 and their representatives/agents (DUNCAN., MONTECASTRO and McLEOD). PACIFIC
15 WEALTH would promise a 300% return in three-year “investment plans” with what the
16 Defendants called “core investors” such as DUTTON and other proposed class members.

17 39. Unbeknownst to potential class members, the following statements of fact, made by
18 PACIFIC WEALTH and their representatives/agents (DUNCAN, McLEOD HELEN
19 MONTECASTRO, HENDRIX MONTECASTRO) at seminars and through e-mail, in 2005-
20 2006, in furtherance of their fraudulent investment scheme, were and remain false and were
21 made to induce reliance by DUTTON and other investors in order to con them into joining
22 their “investment group”:

- 23 a. That a three-year return would be had on investments with Defendants;
- 24 b. That PACIFIC WEALTH was a legitimate investment company and had licenses to
25 engage in such endeavors (i.e, as the real Pacific Wealth Management – a licensed
26 San Diego operation having nothing to do with Defendants);
- 27 c. That DUNCAN, McLEOD and MONTECASTRO were licensed to offer securities,
28 investment advice, commodities, or related financial advice to DUTTON and other

1 investors;

2 d. That there was a company registered with the U.S. Treasury which was networked
3 with the Defendants to do foreign currency investments;

4 e. That the “investment group” was engaged in legitimate investment activities;

5 f. That Defendant, PACIFIC WEALTH, was a legitimate investment company.

6 g. That the mortgages on the homes placed in DUTTON’ and other investors’ names
7 would be paid by Defendants, along with the credit card bills which became due after
8 DUTTON and other investors took cash advances against these credit cards pursuant
9 to the Defendants’ instructions.

10 40. Each of these facts alleged immediately above were known to be false by PACIFIC
11 WEALTH and its representatives/agents (DUNCAN, McLEOD and MONTECASTRO) in
12 the Fall of 2006, since Defendants simply intended on stealing any and all excess escrow
13 monies received from DUTTON and other investors. DUTTON and other investors could
14 not have readily known the true intent of Defendants nor reasonably ascertain the fact that
15 these promises/representations were in fact false. It is also noteworthy that a number of class
16 members also did direct money investments with PWM and had such monies directly stolen
17 from them.

18 41. Defendants specifically used the name PACIFIC WEALTH in order to convince DUTTON
19 and other investors that PACIFIC WEALTH was a legitimate SEC-registered company
20 capable of accepting money for direct investment. An internet search of the name PACIFIC
21 WEALTH would have led any reasonable investor to believe that any “investment” was
22 being made with a legitimate SEC-registered company (i.e., because the Defendants had
23 stolen use of the name from a legitimate company by the same name and Defendants’ agents,
24 DUNCAN, McLEOD and MONTECASTRO, later represented the same to various
25 investors). This fact was not readily known by DUTTON and other investors nor could it
26 have been reasonably ascertained given the fact that a legitimate SEC-registered PACIFIC
27 WEALTH located in San Diego does in fact exist.

28 42. As a separate and distinct scam, PACIFIC WEALTH along with its representatives/agents

1 (DUNCAN, McLEOD and MONTECASTRO) were offering the purchase of Iraqi dinars at
2 a cost of approximately sixty (60) times the actual dollar value/exchange rate for such
3 currency. In this scam, over the last several years, Defendants would take money directly
4 from cash “investors,” including members of the Plaintiff-class, out of the alleged second
5 trust deed loan proceeds, or from transfers from credit card companies. However,
6 Defendants never delivered any dinars, to DUTTON’ knowledge, to any victim who was
7 induced to purchase the same.

8 43. PACIFIC WEALTH and its representatives/agents (DUNCAN, McLEOD and
9 MONTECASTRO) and all other related “entities” and individuals as alleged above, are
10 alleged to be currently in possession, custody or control of excess funds received from
11 escrow on the bad loans with the mortgage company/holder Defendants, and any
12 “investment” returns or interest on the money belong to the other mortgage-holder
13 Defendants who have a beneficial, equitable or security interest in the same.

14 44. PACIFIC WEALTH and its principals are not registered currency exchange representatives
15 or authorized agents of the United States Treasury Department or Iraqi government, although
16 Defendants represented that there was a company registered with the U.S. Treasury which
17 was networked with the Defendants to do foreign currency investments. This representation
18 was in fact false, Defendants knew it to be false, and was made for the sole purpose of, and
19 with the intent of, inducing DUTTON and other investors to invest money into Iraqi dinars.

20 45. PACIFIC WEALTH and its principals are not registered securities brokers. This material
21 fact has never been disclosed by Defendants to any Plaintiff. Plaintiff justifiably believed
22 that Defendants were so licensed and in such belief, justifiably relied on the perceptions
23 created by Defendants. As a result of such reliance, Plaintiff was induced to invest money
24 with the Defendants and was damaged.

25 46. PACIFIC WEALTH and the other shell companies are not licensed financial planning
26 entities. This material fact has never been disclosed by Defendants to any Plaintiff.
27 Plaintiffs justifiably believed that Defendants were so licensed and in such belief, justifiably
28 relied on the perceptions created by Defendants. As a result of such reliance, Plaintiffs were

1 induced to invest money with the Defendants and were damaged.

2 47. As a result of the actions of Defendants, the Plaintiff and potential members of a plaintiff
3 class have been personally and severely damaged in an amount far exceeding \$1,000,000.00
4 per victim.

5 48. The conduct of the Defendants was reckless, intentional, fraudulent and done with the desire
6 to oppress the rights of the plaintiff class and its members. The representations/promises,
7 as alleged above, made by PACIFIC WEALTH and its representatives/agents (DUNCAN,
8 McLEOD and MONTECASTRO) were known by Defendants to be false and misleading and
9 were made for the sole purpose of inducing DUTTON and other investors to invest money
10 into an "investment group" that was nothing more than a scam to steal thousands of dollars
11 from DUTTON and other investors and leave them in financial ruin with no hope of ever
12 recovering, short of bankruptcy. These representations/promises were made by Defendants
13 with a conscious disregard of the rights of DUTTON and other investors. These false
14 representations/promises were intended to cause and did cause injury to DUTTON and other
15 investors and in fact has caused injury to DUTTON and other investors as DUTTON and
16 other investors justifiably relied on the representations/promises of Defendants in turning
17 over thousands of dollars to the Defendants, their credit report scores have drastically
18 decreased and will continue to decrease as mortgage payments and credit card bills are not
19 paid, and properties in the names of DUTTON and other investors are in default and are now
20 facing foreclosure.

21 49. The actions of Defendants amounts to despicable conduct that has subjected DUTTON and
22 other investors to cruel and unjust hardship. Given the fact that DUNCAN has been engaged
23 in fraudulent activities in the past which has caused him to be the subject of prior litigation
24 in other states and this court, his actions as alleged throughout this complaint demonstrates
25 that he has consciously disregarded the rights of DUTTON and other investors all in the
26 name of money.

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1 **CLASS ALLEGATIONS**

2 **APPLICABLE TO ALL CAUSES OF ACTION**

3 50. Each of the victims were lured into the investment scam of the Defendants through similar
4 means. Namely, the victim class was induced into investing with the Defendants as a result
5 of seminars and follow up calls made by Defendants or their agents to each class member.

6 51. All of the victims were considered to be “investment” clients of the Defendants and
7 Defendants lied in the same fashion to all Plaintiffs and potential class members.

8 52. The witnesses, evidence, and sources of the same, are all common to the claims of the
9 victims alleged herein.

10 53. The claims of all potential class members should be resolved in the same forum as there will
11 be a need for a receiver to act for the benefit of all victims, division of common assets and
12 recovery funds, and there are many victims who do not yet know what to do about their
13 status. There are two related actions.

14 54. The classes of the plaintiffs should be divided as “core clients” and “transactional clients.”
15 This is the manner in which the Defendants themselves divided their victims. The
16 “transactional clients” lost a determinate amount of money that was directly “invested” with
17 the Defendants. “Core clients” lost the equity in their homes.

18 55. The types of relief sought by all victims are similar. The Plaintiffs seek reimbursement for
19 direct losses, attorneys fees incurred herein, and equitable relief necessary to put the
20 Defendants out of business so that they cannot hurt anyone else.

21 56. The stakes of the individual plaintiffs only vary in amount, but are ascertainable based on the
22 records of the Defendants.

23 57. The resources of the plaintiffs are such that class certification would aid in a better utilization
24 of attorney time, hard costs of litigation, reduced filing fees, and a more efficient approach
25 to overall litigation given the facts of this case.

26 58. No significant prejudice would befall the Defendants given that they are already defending
27 on multiple lawsuits resulting from their alleged activities. The plaintiffs’ allegations in
28 related Riverside County Superior Court cases are true and demonstrate a common pattern

1 of fraudulent activity that is affecting a definable plaintiff class. Forcing Plaintiffs to each
2 maintain litigation or file individually or in smaller groups will cause financial harm and
3 severe detriment to the ability to seek justice for the incredibly wrongful acts of the
4 Defendants.

5 59. KENNETH DUTTON and the lead plaintiffs in related cases are viable and qualified class
6 representatives as they suffered damages of the same kind and extent as most or all of the
7 victims and are in the best position to represent such interests.

8 **FIRST CAUSE OF ACTION**
9 **FOR UNFAIR BUSINESS PRACTICES**

10 **(As Against All Defendants, Named or Unnamed)**

11 60. Plaintiffs hereby incorporate Paragraphs 1 through 59 as though fully set forth herein.

12 61. The conduct of the Defendants, as alleged herein, is in violation of Sections 17200 and
13 17500 of the *California Business & Professions Code*. Notice pursuant to Section 17209,
14 to the California Attorney General, will be given forthwith.

15 62. Defendants' conduct as described above was unfair and unethical to the plaintiff-consumers
16 in that the Defendants purported to be offering investments that they were not licensed to
17 offer or sell in California. This is a per se violation of law. Furthermore, the U.S. Securities
18 and Exchange Commission has already found these facts to be true as an administrative
19 matter.

20 63. The Defendants' conduct was misleading as they never disclosed the sordid history of
21 JAMES DUNCAN nor was the lack of licenses for offering commodities and securities
22 disclosed to the victims. A reasonable investor would want to have known that DUNCAN
23 was thrice found to have engaged in illegal investment activity by regulatory agencies from
24 several states. A reasonable investor/consumer would want to know whether the Defendants
25 were licensed to offer investments in the State of California. Moreover, Defendants never
26 registered any REIT offered by them pursuant to *California Corporations Code* § 18200 or
27 related provisions of law.

28 64. The Defendants' conduct was unfair because Defendants never fulfilled their verbal and

1 written promises as made to the investor-victims who are members of the potential classes
2 identified herein. The conduct of the Defendants more specifically violates *California Civil*
3 *Code* §§ 1760-1782 (Consumer Legal Remedies Act), *California Corporations Code* §§
4 25110, 25401 [fake investment opportunities being offered by Defendants], and further
5 violates the laws concerning identity theft, the requirements of investment opportunity
6 disclosures and risk assessment, federal commodities laws, federal securities laws, RICO,
7 and laws requiring licensure of investment professionals within the State of California.

8 65. Defendants will not cease in their illegal activities unless stopped by this Court.

9 66. Plaintiffs have suffered losses justifying the imposition of restitution in an amount equal to
10 the amounts stolen from each plaintiff. Said amounts exceed several hundred million dollars
11 as between the various victims. Some of the Plaintiffs are senior citizens or disabled within
12 the meaning of *California Business & Professions Code* § 17206.1.

13 67. Within the meaning of *California Business & Professions Code* § 17203, a receiver is
14 necessary in this case because the Defendants have failed to abide by reasonable expected
15 standards of those offering investments in the State of California and assets must be
16 marshaled for the benefit of the victims. Defendants have promised to return money to
17 whomever wishes to get out of the investment plan offered by Defendants. As such, it ought
18 not be too hard for Defendants to simply return those assets to a receiver for redistribution to
19 the victims.

20 68. Each of the Defendants are "persons" within the meaning of 18 U.S.C. § 1961(3) [RICO
21 statute].

22 69. That Defendants associated with an enterprise engaged in, or the activities of which affect,
23 interstate commerce or foreign commerce. Such activities, as alleged above, include, but are
24 not limited to, fraud in connection with identification documents, fraud in connection with
25 U.S. Mail services, use of wires for conducting fraud, obstruction of justice, tampering with
26 potential witnesses, interference with commerce, extortion, monetary transactions derived
27 from illegal activities, and fraud in the sale of unlicensed securities. Each of these actions
28 is unfair and violates of fair competition laws.

1 70. That said enterprise is an “enterprise” as defined by 18 U.S.C. § 1961(4) and whose
2 associates/Defendants, and their shell companies, function as a continuing unit in the
3 Philippines, Puerto Rico, Washington, California, Iowa, Wisconsin, Nevada, Arkansas,
4 Texas and Arizona. The racketeering of the Defendants and the enterprise have become
5 merged for all relevant purposes and created a pattern of unfair business conduct within the
6 meaning of *Business & Professions Code* § 17200, et seq..

7 71. That Defendants did conduct or participate, directly or indirectly, in the conduct of said
8 enterprise’s affairs through a pattern of racketeering activity in violation of 18 U.S.C. §
9 1962(c).

10 72. That said pattern of racketeering activity includes multiple predicate acts of mail fraud in
11 violation of 18 U.S.C. § 1341 and wire fraud in violation of 18 U.S.C. § 1343 which had or
12 have similar purposes, results, participants, victims, or method of commission, or otherwise
13 interrelated, and are not isolated events, and are repeated predicate acts occurring within a
14 closed period or which demonstrate a threat of repetition in the future.

15 73. That Defendants have received income derived, directly or indirectly, from said pattern of
16 racketeering activity in which Defendants have participated as principals.

17 74. That Defendants, in violation of 18 U.S.C. § 1962(a) used or invested, directly or indirectly,
18 any part of said income, or proceeds of the same, in acquisition of any interest in, or the
19 establishment or operation of other enterprises or another enterprise which is engaged in, or
20 the activities of which affect, interstate commerce between Arizona and California, or other
21 states, or foreign commerce with Iraq.

22 75. That Plaintiffs have been damaged and injured in their persons and properties as a result of
23 Defendants’ repeated and continuing violations of 18 U.S.C. § 1962, that Plaintiffs relied to
24 their detriment on Defendants’ knowingly false statements made by Defendants to induce
25 reliance, which form the predicate acts as outlined above, and that Plaintiffs are entitled to
26 recover threefold any restitution plus the costs of this suit including reasonable attorneys’
27 fees.

28 76. A receiver should be appointed for Defendants’ businesses immediately so as to prevent

1 future harm to victims.

2 **SECOND CAUSE OF ACTION**

3 **FOR FRAUD**

4 **(As Against All Defendants, Named or Unnamed)**

5 77. Plaintiffs hereby incorporate Paragraphs 1 through 76 as though fully set forth herein.

6 78. The representations made at the seminars in Tucson were false, in concealment of true facts,
7 and/or misleading. It was, at all relevant times, the intent of the Defendants to cause
8 Plaintiffs to alter their position relative to the representations made by Defendants or their
9 agents within the last four years.

10 79. The representations were made, as to material facts about "investing" with Defendants,
11 within the last four years, with the intent to induce Plaintiffs to "invest" money with the
12 Defendants. Moreover, the individual Defendants failed to disclose material facts about their
13 involvement with PWM, dual agencies as to real estate agents, and the fact that excessive
14 commissions were being paid to agents and brokers without full knowledge and consent of
15 the Plaintiffs. Each of the Defendants also failed to disclose that they would be stealing the
16 identities of Plaintiffs to apply for credit lines without prior authorization of the Plaintiffs.

17 80. At the time of the representations, the Defendants had no reasonable basis for believing the
18 truth of any of the statements as made to the victims. In fact, the Defendants knew that they
19 were making false representations to the victim-plaintiffs and that Defendants were not
20 licensed to offer "investments" within the State of California. DUNCAN, especially, was
21 a professional scam artist and was quite accustomed to making false representations about
22 "investment" opportunities for members of the public. Had Plaintiffs known of the truth
23 about the Defendants and their history, the Plaintiffs would not have "invested" with the
24 Defendants. Furthermore, Defendants made false promises inasmuch as they never intended
25 on providing any of the victims a "return on investment" as promised. Defendants knew that
26 they could not make good on any promises during 2005-2007 because they stole the money
27 that would have formed the principal of any alleged investment.

28 81. The Plaintiffs reasonably and justifiably relied on the representations of the Defendants.

1 Plaintiffs were not in a position to know of the falsity of the Defendants' representations as
2 made. Moreover, Defendants intentionally used names such as "Pacific Wealth
3 Management" and "Total Return Fund" because these are names that sound like legitimate
4 investment funds or companies.

5 82. As a result of justifiable reliance on the false, incomplete, and/or misleading statements of
6 the Defendants, Plaintiffs were caused to suffer damages that collectively exceed
7 \$100,000,000.00.

8 83. The misrepresentations of the Defendants were intentional, fraudulent, oppressive and
9 malicious within the meaning of *California Civil Code* §§ 3294-3295. Furthermore, because
10 the Defendants held themselves out as fiduciaries, they had an active duty to disclose
11 material facts and intentionally failed to do so.

12 **THIRD CAUSE OF ACTION**

13 **FOR FRAUDULENT TRANSFERS**

14 **(As Against All Defendants, Named or Unnamed)**

15 84. Plaintiffs hereby incorporate Paragraphs 1 through 83 as though fully set forth herein.

16 85. The transfers of excess loan proceeds and direct investment monies from transactions, as
17 described above, made between Defendants, lenders and the Plaintiffs were made with the
18 intent to hinder, delay and defraud present and former victims of the Defendants and
19 amounted to a Ponzi scheme.

20 86. At all relevant times Plaintiffs were de facto creditors of PACIFIC WEALTH
21 MANAGEMENT and the individual Defendants, as a matter of law.

22 87. Claims arose before the transfers alleged in this case because of the intentional and
23 premeditated fraud of the Defendants. Transfers of assets that could have been used to
24 satisfy the lenders or plaintiffs, as creditors, were made without lawful consideration by the
25 Defendants and in conjunction with various sham corporations.

26 88. The transfers alleged herein are avoidable per *California Civil Code* §§ 3439.04(a) and
27 3439.04(b).

28 89. The transfers alleged herein are avoidable per *California Civil Code* § 3439.05.

1 90. Payments made to PACIFIC WEALTH, or any other Defendant, or their sham corporations,
2 were made without giving reasonably equivalent value in exchange.

3 91. But for the shady transactions mentioned in this complaint defendants were otherwise
4 insolvent or sham entities.

5 92. Plaintiffs are entitled to damages from each of the defendants in a sum not less than
6 \$1,000,000.00 for each investor harmed by the conduct of the Defendants.

7 93. Plaintiffs are entitled to interest on principal balances running from Fall 2004 to judgment.

8 94. Plaintiffs seek the imposition of a constructive trust for the benefit of all creditors affected
9 by this action.

10 95. Plaintiffs seek imposition of a receivership over the Defendants named herein for purposes
11 of disgorging any funds received by way of unlawful transfers.

12 **PRAYER FOR RELIEF**

13 ***WHEREFOR, Plaintiff prays for the following relief:***

14 1. Certification of this case as a class action upon proper motion or application. In the
15 alternative a designation of complex or provisionally complex is sought for this case because
16 of the complexity of legal and factual issues and the number of parties and witnesses likely
17 to present herein.

18 2. The placement of Defendants' businesses into receivership.

19 3. Issuance of injunctive relief to protect Plaintiffs, the public, and prospective class members.

20 4. Damages in the amount of \$1,200,000,000.00 to be placed in a victims' compensation fund,
21 recovery pool, or constructive or actual trust to be distributed to victims of the Defendants'
22 fraud and to those governmental agencies who incur costs as a result of the investigation of
23 any matters against the defendants (except lender defendants), whether named or unnamed.

24 5. The granting of any requests for intervention by any governmental or regulatory agency who
25 seeks the same in this case, if at all.

26 6. Punitive damages as to the Second and Third causes of action, not to exceed 10 times the
27 value of any proven fraud herein.

28 7. Costs of suit.

- 1 8. Restitution, constructive trust, and rescission where appropriate to make Plaintiff whole on
2 any or all of the causes of action as alleged.
3 9. Any and all other relief as necessary or deemed appropriate in this case.
4 10. Attorneys' fees pursuant to *California Code of Civil Procedure* § 1021.5 and the provisions
5 of *California Business & Professions Code* § 17200, et seq.
6

7 Respectfully submitted:

8 DATED : 7/23/07

9 ACKERMAN, COWLES & LINDSLEY

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11 RICHARD D. ACKERMAN, ESQ.,
12 Attorneys for Plaintiffs.
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