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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

17 RONALD C. EVANS, an individual; JOAN M.
18 EVANS, an individual; DENNIS
19 TREADAWAY, an individual; and all others
20 similarly situated,

21 Plaintiffs,

22 vs.

23 ZIONS BANCORPORATION, N.A., successor-
24 in-interest to ZB, N.A., a national banking
25 association, dba California Bank & Trust,

26 Defendant.

Case No. 2:17-cv-01123-WBS-DB

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **AIDING AND ABETTING FRAUD;**
2. **SECURITIES FRAUD;**
3. **CONSPIRACY TO COMMIT FRAUD;**
4. **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY;**
5. **INTENTIONAL INTERFERENCE WITH CONTRACT; AND**
6. **PENAL CODE VIOLATION**

A CLASS ACTION WITH A JURY TRIAL DEMANDED

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1 **I. SUMMARY OF THE ACTION**

2 1. This is a class action for over \$100 million in damages. It is brought against a
3 national bank (Zions Bancorporation, N.A.) for knowingly aiding and abetting a Ponzi scheme.
4 International Manufacturing Group, Inc. ("IMG") was owned by Deepal Wannakuwatte
5 ("Deepal"). Deepal and IMG ran a Ponzi scheme whereby investors invested money to help
6 fund IMG's purchase of medical gloves in Asia. The medical gloves were to be shipped to the
7 USA and resold by IMG to the Veterans Administration ("VA") and other governmental
8 agencies in the United States.

9 2. Deepal claimed that IMG had yearly \$100 million contracts with the VA. IMG
10 had only a \$25,000 per year contract with the VA. The Ponzi scheme injured roughly 100
11 citizens, primarily from the Sacramento area. The scheme was promoted by word of mouth
12 between family, friends and early victims of the scheme. The investment was not sold on the
13 internet or through brokerage houses. The Ponzi lasted from approximately 2002 to 2014. As
14 do all Ponzi schemes, it grew exponentially at the end.

15 3. During the scheme, IMG and Deepal banked primarily at a subsidiary of Zions
16 Bancorporation, which was California Bank & Trust ("CB&T").¹ Hundreds of millions in stolen
17 money flowed through CB&T. From 2005 to 2011, CB&T loaned the Ponzi scheme over \$21
18 million in at least nine separate loans. CB&T also loaned money directly to Deepal. Zions
19 Bank loaned money to Wannas Enterprises, LLC ("Wannas") which was guaranteed by IMG.
20 Wannas was owned by Deepal.

21 4. Plaintiffs do not presently believe and therefore do not allege that CB&T was
22 aware of the Ponzi scheme at the outset of the lending relationship. Rather, Plaintiffs allege that
23 CB&T initiated its lending and then discovered the fraud as the result of its lending activities,
24 no later than October 2009 when CB&T informed IMG that there would be no more loans.

25
26 ¹ Effective December 31, 2015, California Bank & Trust, a California banking corporation, merged its banking
27 charter into ZB, N.A. and it ("CB&T") no longer exists as a separate California banking corporation. ZB, N.A. is
28 wholly owned by Zion Bancorporation, N.A. The facts recited herein will refer to "California Bank & Trust" or
"CB&T" because the documentary evidence generated between 2002 and 2014 refers to and uses the name of the
predecessor entity. However, the requested judgment to be entered shall be against Zion Bancorporation, N.A. and
ZB, N.A.

1 5. When making any loan, a regulated national bank must know the use of the loan
2 proceeds by the debtor and the source of funds for the debtor's anticipated repayments to the
3 bank. 12 C.F.R. § 1.5(b). CB&T claimed on appeal that it satisfied the statute. Therefore,
4 CB&T knew the use of the loan proceeds by IMG and the sources of IMG's repayment.

5 6. Deepal and IMG could not pay CB&T its interest, principal or fees without
6 stealing the money from innocent investors to make the payments, which they did. IMG could
7 not pay CB&T with legitimate money on time, or ever, because it was a Ponzi scheme that
8 earned no money in its wholesale business from importing medical gloves from Asia. IMG did
9 not resell gloves made in Asia to the Veterans Administration or other governmental agencies as
10 was represented to the investors in the scheme; and as was represented by Deepal to CBT in
11 2005 as the source of repayment at the inception of the loans from CB&T to IMG.

12 7. CB&T discovered IMG was a Ponzi scheme no later than 2009 when CB&T's
13 lawyers foreclosed on \$9 million in security pledged by another bank (Bank of America) for a
14 Seattle investor. The Seattle investor in IMG was a federally recognized American Indian tribe
15 whose debts were guaranteed by the Bureau of Indian Affairs ("BIF"). The tribe was called the
16 Jamestown S'Klallam Tribe and it provided security to CB&T for one of the nine loans. After
17 CB&T discovered IMG was operating a Ponzi scheme, CB&T ceased further lending, but
18 allowed IMG to continue to operate the scheme inside the four corners of the bank. CB&T
19 maintained the depository relationship with IMG until 2014 so its \$21 million could be repaid
20 with money stolen from other investors ensnared in the scheme.

21 8. No later than 2009, CB&T knew and understood that helping IMG steal the
22 money from other investors was, literally, the only way CB&T could get repaid the \$21 million
23 it had invested into IMG. The potential loss of \$21 million created the motive for CB&T to help
24 IMG. CB&T, as a corporation, knowingly and intentionally assumed the legal risks (articulated
25 in this complaint) of allowing Deepal to operate a financial criminal enterprise inside the bank
26 in order to recover its \$21 million that it had loaned to the Ponzi scheme. CB&T also made a \$3
27 million profit while the unknowing and innocent investors lost over \$100 million.

28 ///

1 9. CB&T was the only investor in IMG that possessed 24/7 access to the personal
2 financial records of IMG and Deepal. The bank's records in CB&T's possession showed the use
3 of loan proceeds and the source of funds for repayment. A cursory review of those records
4 would reveal to any person with 2 IQ points that IMG was a Ponzi scheme. CB&T looked,
5 knew, realized the scope of its potential loss, engineered a perceived exit, executed on its plan
6 and, but for this litigation and the Ninth Circuit, nearly profited from assisting Deepal's scheme.

7 10. The Plaintiffs invested in the Ponzi scheme after CB&T knew it was a Ponzi
8 scheme. Ron and Joan Evans invested as late as January 2014. Based on false pretenses, the
9 Plaintiffs had their money deposited in IMG's "Wholesale Account" # 4841 at CB&T and then
10 misappropriated out of the account by IMG with the physical help of CB&T.

11 11. It was Royal W. Minson, II ("Buzz"), a senior executive at CB&T, who
12 established the lending relationship with IMG, helped to underwrite and then administered the
13 \$21 million in loans. According to Buzz, Deepal told him the proceeds of the loans were
14 intended to be used by IMG to buy glove inventory manufactured in Asia. According to Buzz,
15 Deepal told him early on that the source of repayment of the loans by IMG to CB&T was to
16 come from IMG's resale of the glove inventory to federal agencies with whom he contracted,
17 including an alleged \$100 million contract with the Veterans Administration. However, Buzz
18 subsequently learned there was little to no wholesale inventory purchased directly by IMG in
19 Asia and there were little to no gloves sold to the Veterans Administration. Buzz was being
20 paid by Deepal while working at CB&T. Plaintiffs presently believe Buzz did not broadly
21 discuss his knowledge about or involvement with IMG, as that could result in his immediate
22 termination from CB&T. Employees are prohibited from receiving payments from a customer
23 and debtor of the bank. However, CB&T otherwise understood that IMG was defrauding
24 investors whose funds were being used to pay IMG's debts to CB&T.

25 12. After Buzz discovered IMG was a Ponzi scheme, he still promoted IMG to
26 CB&T and approved of numerous loan repayment date extensions granted IMG by CB&T
27 ("Maturity Date Extensions"). Over the course of the nine CB&T loans, IMG was granted 20
28 Maturity Date Extensions, which were needed more by CB&T than by IMG. IMG was in

1 default and could never pay off the loans because it had no income. It did not benefit IMG to
2 stay in business in order to owe more money. The only entity that benefited financially from
3 IMG's continued existence was CB&T because it got repaid and made a profit.

4 13. Buzz promoted extraordinary leniency for IMG, the debtor, by CB&T, the
5 creditor, while flying on Deepal's private jet. The money paid to Buzz on the side by Deepal
6 violated 18 U.S.C. §215.

7 14. No innocent bank grants a defaulting debtor, with no obvious source of income,
8 20 extensions of time to pay off past due secured loans. The only plausible business reason for
9 the 20 Maturity Date Extensions was the bank's belief that repayment with investors' money
10 deposited over time was safer for the bank.

11 15. CB&T ensured that its loans to IMG were collateralized to protect against
12 default. IMG was continually in default. CB&T overlooked the defaults. No innocent bank
13 refuses to foreclose on security pledged by third parties unless to do so would cause the loss of
14 the security, the termination of the business of the debtor, and the ultimate failure of the
15 debtor's repayment on the loans.

16 16. IMG had both cash investors as well as investors who provided Standby Letters
17 of Credit ("SLOC"s) in favor of CB&T. Some investors did both. Despite continued defaults
18 by IMG, CB&T refused to foreclose on the security pledged by local Sacramento area SLOC
19 investors. CB&T did foreclose on the SLOC pledged by the non-local Jamestown S'Klallam
20 Tribe because the government decided to discontinue the 90% loan guarantee for Indians
21 making the Bank of America the standby deep pocket for CB&T to pick for repayment.

22 17. CB&T did not foreclose on the 8 SLOCs pledged by local investors because: (i)
23 the security was clearly rescindable as being obtained by the fraud of both IMG and CB&T; (ii)
24 upon foreclosure the local investors would tell the other Sacramento investors that IMG was a
25 Ponzi scheme; and (iii) these local SLOC investors were customers of the bank with privity to
26 CB&T. With privity, CB&T owed them the obligation to avoid misrepresenting what was
27 occurring with IMG at their own bank.

28 ///

1 18. When CB&T was named as the beneficiary of the SLOCs created by the local
2 investors' other banks, it failed to disclose to the local investors, as customers of CB&T, that:
3 (i) CB&T was not financing the manufacture of gloves in Asia for IMG; and (ii) CB&T was
4 giving IMG the loan proceeds without any restrictions on the use of the funds.

5 19. It was known to CB&T that the purpose of each SLOC was for CB&T to finance
6 and thereby monitor the manufacturing of medical gloves in Asia being purchased by IMG as
7 part of IMG's "Wholesale" business. The investors' purpose of naming CB&T as the
8 beneficiary of each SLOC did not include CB&T transferring \$21 million in cash directly to
9 IMG which is what CB&T did. If direct loan payments to IMG had been the purpose of the
10 SLOCs, the investors would not have incurred the SLOC-related acceptance and interest fees
11 (approximately 8% per year on \$21 million). Instead of SLOCs, the investors would have
12 simply given their cash directly to IMG in exchange for IMG's promissory notes which is what
13 IMG was giving to most of its investors.

14 20. Starting in 2008, CB&T made efforts to preclude the local SLOC investors from
15 attending meetings between Deepal and CB&T when the topics discussed included their
16 pledged security naming CB&T as the beneficiary, the risks they were assuming, and the terms
17 of the SLOCs naming CB&T as the beneficiary. See **Exhibit 14**.

18 21. The local SLOC investors were precluded by CB&T's employees from meeting
19 with Deepal and CB&T at the same time, because it was represented to these local investors by
20 CB&T that CB&T was providing IMG with a financing bridge to secure the debt owed by IMG
21 to the glove manufactures in Asia. The bridge was to cover the time period between the
22 manufacture and shipment of the gloves to IMG, the payment to IMG by the Veterans
23 Administration after the gloves had arrived by container ship in the USA, and the payment of
24 the manufacturers in Asia by IMG after IMG had gotten paid by the VA.

25 22. CB&T intentionally excluded the Sacramento investors from attending meetings
26 with Deepal and CB&T because CB&T knew that it was transferring the loan proceeds directly
27 to Deepal, Deepal was using the loan proceeds to pay investors, and the funds were not used for
28 their intended purpose of financing the purchase of inventory in Asia as all of the investors were

1 lead to believe was the role played by CB&T.

2 23. CB&T could not foreclose on the Sacramento investors' SLOCs without
3 destroying IMG and alerting the local investors. The only alternative safe source of repayment
4 was the defrauded investors' money being deposited each month by Deepal into the IMG
5 Wholesale Account at CB&T.

6 24. CB&T knew that IMG was repaying the \$21 million in loans from CB&T to
7 IMG with investor deposits because CB&T, on a daily basis, was monitoring the deposits of
8 investor money into IMG's accounts to repay the loans. It may be inferred that CB&T decided
9 "just to relax", monitor the flow of investor funds through the bank, and let the pay-back happen
10 over time by way of the continued operation of IMG by Deepal. It may be inferred this was
11 CB&T's plan because that is exactly what happened.

12 25. At the inception of the loans, the monthly interest was to be paid out of the IMG
13 General Account #7631 with automatic debits. The auto debit process did not work because
14 there were insufficient funds on deposit, or Deepal would fail to transfer investor funds from the
15 Wholesale Account #4841 to the General Account #7631 to effectuate the auto debit process.
16 Over time, IMG experienced millions in overdrafts at CB&T in a business that was represented
17 to be sophisticated enough to generate \$100 million per year in the sales of medical gloves.

18 26. Heddy Chiang, the branch manager of CB&T at the Arden Way Branch, was
19 constantly monitoring the IMG accounts and informing Deepal of the amounts due CB&T and
20 the amounts available for Deepal to pay CB&T. Attached as **Exhibit 1** is a typical and
21 reoccurring loan monitoring email from Heddy to Deepal. The June 17, 2010 email reflects their
22 intimate working relationship and reads as follows:

23 "Hi Deepal, thanks for your deposit yesterday and today!!!
24 Can I help you do transfer into the -87631 acct for the loan
25 payments too please!! From which account and how much?
26 Thank you!! Heddy 600-4902" (see Exhibit 1).

27 27. Attached as **Exhibit 2** is a copy of a CB&T Transaction Inquiry dated November
28 4, 2009 for the IMG Wholesale Account. **Exhibit 2** shows the wire into CB&T of an
investment by JTS Communities, Inc. ("JTS") of \$2,700,000 which was circled by CB&T.

1 CB&T knew that JTS Communities was a local Sacramento investor in IMG and that it was JTS
2 depositing the money. CB&T created its own internal files on many IMG investors, including
3 JTS.

4 28. Attached as **Exhibit 3** are copies of two deposit slips for the #4841 account dated
5 July 7, 2008 for \$65,000 and July 8, 2008 for \$110,000. Both slips have the notation that the
6 deposits were approved by Heddy Chiang with a "No Hold Per Heddy." On a constant basis
7 starting in or about 2006, Heddy Chiang would allow the deposits of investors' personal checks
8 to be cleared without the expiration of the required hold period which enabled IMG to make
9 needed lulling payments to perpetuate the Ponzi scheme. Funding bounced checks and clearing
10 checks before the required hold period equates to a regulated bank loaning additional monies to
11 perpetuate a Ponzi scheme.

12 29. In October of 2009, after CB&T fully understood the fraud, CB&T gave notice
13 to IMG that it was terminating further secured lending but would still allow IMG to deposit new
14 investors' money into IMG's Wholesale Account # 4841 at CB&T. The only beneficiary of this
15 joint decision was CB&T. IMG did not benefit; IMG just owed more money to more defrauded
16 investors.

17 30. CB&T claims as a defense that maintaining the depository relationship with IMG
18 for three years after February 2011 would not be consistent with the bank's knowledge of the
19 Ponzi scheme because CB&T was repaid in full by February 2011. However, terminating IMG
20 as a customer immediately after repayment in full in 2011 would have caused IMG's instant
21 collapse, provided the obvious evidentiary link between repayment and knowledge, and
22 subjected the bank to preference and fraudulent conveyance claims upon IMG's bankruptcy.
23 Letting sleeping dogs lie from 2011 to 2014 was the perceived path to financial safety pursued
24 by CB&T.

25 31. CB&T also contends that pure luck is the more likely explanation for CB&T's
26 "innocent" exit from the IMG Ponzi scheme in 2014 with a minimum \$3 million profit.
27 However, being dumb and lucky at the same time while having possession of all the relevant
28 financial evidence is not a viable explanation for this bank.

1 **II. JURISDICTION AND VENUE**

2 32. This Federal District Court may exercise jurisdiction over this Class Action
3 pursuant to 28 U.S.C. § 1332 because the Plaintiffs are residents of California and CB&T is a
4 resident of the state of Utah. The matter is a complex Class Action. This Court has personal
5 jurisdiction over the Defendants named in this Complaint because CB&T conducted business in
6 California and it participated in a California-based fraudulent scheme that injured Californians.
7 Venue is proper in this District because the conduct at issue took place and had an effect in this
8 District and CB&T regularly conducted and still regularly conducts substantial banking
9 business in this District.

10 **III. PARTIES**

11 33. Plaintiff Ronald C. Evans (“Ron Evans”) is an individual living and doing
12 business in El Dorado County, California. Ron Evans invested \$50,000 in IMG on January 21,
13 2014. He and his wife’s personal check payable to IMG for \$50,000 is attached as **Exhibit 4**.
14 **Exhibit 4** was deposited by IMG into the Wholesale account #4841 at CB&T with the physical
15 approval of the deposit by CB&T. Most of the investors made their investments in IMG with
16 personal checks, and many of these indicated on the face of the check that it was for an
17 investment in IMG.

18 34. As testified to by FBI Special Agent Paul S. Artley (page 130 of 167 at Dkt. 26-
19 1), account #4841 was Deepal’s account at CB&T that was used for the IMG “VA contracts”
20 like Evan’s contract. The “vast majority” of the IMG investors’ deposits, like Evan’s deposit,
21 flowed into and out of the Wholesale Account. According to Agent Artley, from March 2006 to
22 August 2013, \$205 million of deposits and withdrawals took place inside account #4841 with an
23 ending balance of approximately \$1,000 on August 30, 2013 and no “incoming wire transfers
24 were noted from the VA ...” (page 131 of 167 at Dkt. 26-1).

25 35. Attached as **Exhibit 5** are the CB&T prepared Account Summary Statements for
26 the IMG Wholesale Account #4841 for the months of July 2006, 2007, 2008, 2009, 2010, 2011,
27 2012 and 2013. **Exhibit 5** shows the deposits by investors and the withdrawals by Deepal to pay
28 interest to the investors. The Plaintiffs picked July just as an example. **Exhibit 5** also shows the

1 first account statement being mailed to IMG's business address at 879 F Street. Starting in
2 2007, Deepal directed CB&T to mail the statements only to Deepal's home at 5231 Pleasant
3 Drive. As agent Artley said, such an address change is obvious evidence of subterfuge which
4 CB&T had to participate in order for the change to occur.

5 36. **Exhibit 5** shows that IMG was a Ponzi scheme with millions deposited each
6 month of each year by investors, monthly fund outflows equaling or exceeding the deposits and
7 the ending balance each month at below zero or close to zero. For instance, IMG had a negative
8 balance of \$357,939.65 on July 3, 2008, a negative balance of \$6,385.10 on July 17, 2008, a
9 negative balance of \$8,395.27 on July 18, 2008, a negative balance of \$9,091.66 on July 25,
10 2008 and another negative balance of \$4,853.81 on the 30th of July in the year of 2008. This is
11 just one month in 2008 of bounced checks by IMG at CB&T totaling over \$384,000.

12 37. Over time, IMG bounced millions of dollars in bad checks. The Court can take
13 judicial notice that, generally, banks do not like bounced checks or negative balances. A
14 negative balance is a loan to the depositor to cover the deficit because the books of the bank
15 must always balance. Generally, banks terminate their relationships with customers who write
16 checks with insufficient funds. CB&T did not terminate its relationship with IMG and Deepal
17 because it wanted to get repaid the money it had loaned to IMG. Terminating IMG's deposit
18 accounts would not promote the goal of getting repaid.

19 38. IMG was an obvious Ponzi scheme. **Exhibit 6** is an email dated August 28,
20 2008 from Diana Garside, the Compliance Officer at North Valley Bank in Sacramento where
21 Deepal opened accounts for IMG to obtain an investor's SLOC from North Valley Bank. In
22 2008, it only took North Valley Bank a couple of months of doing business with Deepal to
23 conclude he was kitting checks. The 2008 email reads:

24 **FYI.... Significant kiting activity has been noted for the**
25 **customer (International Manufacturing Group, Inc. and**
26 **Deepal Wannakuwatte) involving multiple accounts and**
multiple financial institutions. (See Exhibit 6).

27 39. FBI Special Agent Paul S. Artley (page 132 of 167 at Dkt. 26-1), said his review
28 of account #4841 documents, including Account Summary Statements, revealed that IMG was

1 operated by Deepal as a Ponzi scheme. The scheme was egregious to agent Artley because
2 Deepal had the temerity to pay back investors for old investments with their own money
3 deposited with IMG for a new investment. Artley said in his declaration that:

4 ... it appears investors were paid "profit/interest" payments
5 from principal investments made by other investors, or, as
6 indicated below from their own investment.

7 40. Evans invested \$50,000 with the promise he would earn \$3,203.33 or 6% interest
8 repaid by IMG on May 31, 2014 - one day after IMG filed for bankruptcy protection. Evan's
9 investment was evidenced by a form Promissory Note issued by IMG which is attached as
10 **Exhibit 7**. Attached as **Exhibit 8** are other examples of the form Promissory Notes used by
11 IMG. **Exhibit 8** shows the uniformity of the representations in the writings used to document
12 the investments. Uniformity of the written misrepresentations is key to class certification in a
13 fraud case. The presumption of reliance may be established by the Plaintiffs parting of money
14 based on uniform false promises. *Vasquez v. Superior Court*, 4 Cal. 3d 800 (1971).

15 41. A form Investment Agreement between Evans and IMG is attached as **Exhibit**
16 **9**. Examples of other Form Investment Agreements used to solicit other investors are attached
17 as **Exhibit 10**. The representations in all the agreements were the same - IMG will be obtaining
18 bids for gloves from the Federal Government and the investor, like Evans, will lend IMG the
19 amount invested for IMG to fulfill the bid with the Federal Government.

20 42. Evans, a dentist, met Deepal at a tennis game. Evans hosted the crook for brunch
21 at his home. Deepal was the owner of the Sacramento Capitals, a tennis team. Deepal held
22 himself out to Evans and the others to be a person who acted in a fiduciary capacity to his
23 investors. CB&T admitted that by 2007 it knew Deepal sold his investments to close friends
24 based on trust and confidence. See, page 5 of **Exhibit 14**.

25 43. Deepal mentioned the IMG investment opportunity to Evans based on IMG's
26 business model. Deepal transmitted the Form Agreement to Evans. Evans reasonably relied on
27 the truth of the representations made by IMG in the Form Agreement and parted with his
28 money. Evan's reliance was reasonable given the stature of Deepal as a fiduciary in the
community, the amount invested, the rate of return and the longevity of the business model in

1 Sacramento.

2 44. Ron Evans' \$50,000 was deposited into the IMG Wholesale Account #4841 at
3 CB&T and then dissipated by IMG with the help of CB&T. CB&T knew that the \$50,000
4 invested by Evans and physically deposited by CB&T into the IMG Wholesale Account was
5 intended by Evans to be used by IMG to help IMG to purchase medical gloves manufactured in
6 Asia to sell to the Federal Government to satisfy bids awarded to IMG.

7 45. CB&T knew the purpose of Evans' \$50,000 investment (as well as that of all the
8 other investors writing personal checks for thousands of dollars) because: (i) it knew IMG's
9 purported business model because it loaned IMG \$21 million based on IMG's purported
10 business model; (ii) CB&T was the beneficiary of SLOCs drafted by CB&T based on IMG's
11 business model; (iii) CB&T had foreclosed on the \$9 million BofA SLOC issued based on
12 IMG's business model; (iv) CB&T traced investors deposits to pay off the loans made to IMG
13 based on the Asian glove business model; (v) CB&T did not issue SLOCs to Asia for glove
14 manufacturers for millions of dollars for inventory and it did not receive payments from the VA
15 for gloves sold based on bids awarded to IMG; and (vi) CB&T accepted as deposits hundreds of
16 millions of dollars from individual investors writing personal checks for even amounts to IMG.
17 Those checks, like Evans' check, could only be construed as an unregistered security
18 investment into IMG because these people were not buying medical gloves with their money.

19 46. Banks are trained to identify unregistered securities and CB&T knew the IMG
20 investment contract was an illegal unregistered security because it obviously was a passive
21 investment – profit from the work of others.

22 47. Had Ron Evans known that his investment would not be used to help IMG to
23 purchase gloves in Asia to resell to the VA in the USA, he would not have invested his money
24 with IMG.

25 48. **Plaintiff Joan M. Evans ("Joanie Evans")** is an individual living and doing
26 business in El Dorado County, California and the wife of Ron Evans. Joanie Evans invested in
27 the same Promissory Note issued by IMG pursuant to the same Form Investment Agreement.
28 Ron and Joanie Evans discussed the risks and rewards of the investment and both decided

1 together that it was reasonable to proceed. Joanie Evans reasonably relied on the false
2 representations in the form Investment Agreement to her detriment.

3 49. **Plaintiff Dennis Treadaway ("Treadaway")** is an individual living and doing
4 business in Sacramento County, California who invested over \$2 million in IMG in a series of
5 transactions from 2007 to 2014. Treadaway invested in IMG by way of Promissory Notes and
6 Standby Letters of Credit ("SLOCs"). **Exhibit 13** is a copy of a SLOC.

7 50. Treadaway executed similar form Promissory Notes as executed by Evans and
8 similar Form Investment Agreements. Treadaway's personal checks were deposited into the
9 IMG Wholesale Account at CB&T, just like Evans and everyone else.

10 51. Treadaway understood IMG's business model. Treadaway believed that his
11 investment funds would be used to purchase actual glove product overseas to sell to the VA and
12 other agencies. IMG never disclosed to Treadaway that his investment would be used to pay
13 back other investors. Treadaway reasonably relied on the representations in the Investment
14 Agreements. Treadaway's reliance was reasonable based on the constant returns IMG paid to
15 Treadaway to gain his trust. Had Treadaway known the truth, he would not have invested his
16 money with IMG. Treadaway is a net loser of approximately \$950,000, the exact amount to be
17 proven at trial.

18 52. Plaintiffs Ron Evans, Joanie Evans, and Treadaway, along with the Class
19 Members, will collectively be referred to herein as "Plaintiffs".

20 53. **Defendant Zions Bancorporation, N.A.** is the parent to **Defendant ZB, N.A.**,
21 and the successor to the liabilities of CB&T. Both corporations are incorporated and
22 headquartered in Utah and do substantial business throughout California. Effective December
23 31, 2015, California Bank & Trust, a California banking corporation, merged its banking charter
24 into ZB, N.A. Therefore, CB&T no longer exists as a separate California banking corporation.
25 The liabilities of CB&T have been assumed by Zions Bancorporation and ZB, N.A. The facts
26 recited herein will refer to "California Bank & Trust" or "CB&T" as if it were still an entity
27 because the documentary evidence generated refers to and uses that name. However, the
28 requested money judgment to be entered shall be against Zions Bancorporation, N.A. and ZB,

1 N.A.

2 54. During the relevant time period of this case the following **non-parties** were
3 employees and agents of CB&T, who, at all relevant times, were acting within the course and
4 scope of their employment and agency for CB&T:

5 55. **Royal W. Minson, II (“Buzz”)**, deceased, was the Director of International
6 Business Development at CB&T in charge of financing overseas transactions for customers in
7 the USA. Deepal paid Buzz money on the side for his work for IMG while Buzz was employed
8 at CB&T. Deepal paid Buzz on the side while CB&T was loaning \$21 million to IMG based on
9 the recommendations by Buzz that CB&T should loan the money to IMG.

10 56. Buzz was involved in the IMG loan approval process, reviewing and approving
11 the language of the SLOCs naming CB&T as the beneficiary, and drafting Commercial Letters
12 of Credit and other documents supported by the investors SLOCs. Buzz formed a company
13 with his wife called Sourcing Services International, Inc. and actually imported 2 containers of
14 gloves from China which Deepal was forced to accept for delivery to IMG in the USA.

15 57. Buzz acquired significant knowledge about all aspects of the business of IMG.
16 As early as September 19, 2007 Buzz informed Deepal that he wanted \$225,000 per year plus a
17 percentage of the profits. In **Exhibit 11**, Buzz declared his financial loyalty and commitment
18 to Deepal’s business which reads as follows:

19 **“I think you know me well enough by now that by committing**
20 **to work with you, I am committing my complete loyalty and**
21 **dedication to achieving increasing economic success for you**
22 **and your entities. The *quid pro quo* will be my ability to**
23 **participate in those successes.” (See Exhibit 11).**

24 58. Buzz advised CB&T to make the 9 loans to IMG. Buss then advised CB&T to
25 grant Maturity Date Extensions (at least 20 times) because IMG did not have the money to pay.
26 Buzz also advised CB&T to agree to substitute security pledged by investors in IMG (at least 21
27 times) to avoid having CB&T declare IMG in default and institute foreclosures. The Maturity
28 Dates on the 9 Notes had to be extended to avoid foreclosures. The existing security pledged
for some of the Notes had to be exchanged because some banks were not renewing their

1 SLOCs, or CB&T was rejecting SLOCs issued by certain weak banks during the Great
2 Recession.

3 59. Buzz accommodated IMG and Deepal even after Buzz knew that IMG did not
4 have the funds to repay the loans as promised. IMG did not have the funds to repay the loans as
5 promised because IMG did not have any business to generate income to repay the loans as
6 promised. All of the needed information for CB&T was reflected in the Account Summary
7 Statements in CB&T's possession as set out in **Exhibit 5**. The debits and credits in **Exhibit 5**
8 told Buzz and the other employees at CB&T that the loans could only be repaid, if at all, from
9 new investors' money deposited in the Wholesale Account #4841 for IMG at CB&T, an
10 account which was monitored daily by CB&T. See **Exhibits 1, 2 and 3**.

11 60. **Alex Fukui ("Fukui")** was and still is a senior lawyer for CB&T who was
12 assigned the task by his employer in or about 2007 to conduct legal work on the IMG loans and
13 accounts at CB&T. Fukui graduated from UC Berkley and then the UCLA school of law before
14 working as a licensed lawyer for CB&T. CB&T contends that all communications, between
15 Fukui and Buzz regarding Deepal and IMG were not business decision communications but
16 were privileged attorney-client communications regarding facts juxtaposed against the law. The
17 Plaintiffs do not presently contest CB&T's designation, or its description of the Fukui
18 relationship to the IMG file.

19 61. The Plaintiffs do allege that the IMG matter was referred to Fukui in the legal
20 department of CB&T no later than 2008. Such a referral to a highly trained lawyer would have
21 resulted in CB&T's actual knowledge that it had loaned money to a Ponzi scheme. If Diana
22 Garside of North Valley Bank can see check kiting with only a brief business relationship with
23 IMG (see **Exhibit 6**) and FBI agent Artley can observe a Ponzi scheme by a cursory review of
24 IMG's Wholesale Account activity (see Dkt. 26-1), then CB&T knew IMG was a Ponzi in 2008
25 after Fukui focused his legal mind on this problematic customer.

26 62. **Jun Enkoji ("Enkoji")** was a Vice President and Commercial Banking Officer
27 at CB&T associated with the Central Valley Region and the Fresno Commercial Loan Office.
28 Jun Enkoji approved all 9 loans, the 20 loan extensions, and the 21 collateral swaps granted to

1 IMG by CB&T. After Enkoji learned that the BIA would no longer guarantee the Bank of
2 America's loan to the Indian tribe, he helped IMG and CB&T to defraud the Jamestown
3 S'Klallam Indian Tribe and the Bank of America out of \$9 million.

4 63. To get the \$9 million, Jun Enkoji directed CB&T to foreclose on the 2006 BofA
5 SLOC (**Exhibit 13**) obtained by the Jamestown Health & Medical Supply, Inc. ("JHMS") from
6 BofA for CB&T.

7 64. Enkoji knew that JHMS and IMG had the same address in Sacramento which
8 was at 879 F. Street because both entities banked at CB&T. Enkoji knew that money was
9 constantly transferred between IMG and JHMS. Enkoji knew that Deepal controlled both IMG
10 and JHMS. Deepal said in **Exhibit 12** – "I have been given full authority to sign on behalf of
11 Jamestown Health & Medical Supply Company LLC in any legal capacity."

12 65. In 2006 and 2007 CB&T gave \$8 of the \$9 million loan proceeds directly to
13 IMG to operate the Ponzi scheme based on phony Purchase Orders from JHMS to IMG
14 submitted by Deepal. Enkoji was informed in late 2008 (over two years after transferring the
15 loan proceeds to IMG), that JHMS still owed IMG \$9,147,685.50 for gloves JHMS had ordered
16 and IMG had manufactured, shipped, and sold to JHMS in 2006 and 2007. In late 2008, Enkoji
17 knew that the \$9 million CB&T had loaned IMG on the Indian tribe SLOC was missing.

18 66. The \$9 million BofA SLOC, number 3082234, is attached as **Exhibit 13**. As
19 described in **Exhibit 13**, the letter of credit could be triggered only after CB&T declared a
20 default for non-payment by IMG and transmitted to BofA copies of operative Purchase Orders
21 made by JHMS, fulfilled by IMG, and paid by CB&T to be manufactured.

22 67. Prior to 2008, IMG had been in default on the tribal loan. In response, Enkoji
23 created a lock box account at CB&T in which JHMS and IMG were supposed to deposit
24 payments by JHMS to IMG for the millions in gloves already purchased by JHMS. No deposits
25 were ever made into the lock box account set up by CB&T to protect CB&T. In addition,
26 JHMS had its own checking account at CB&T. The JHMS checking account revealed check
27 kiting between IMG and JHMS, that JHMS had no money to pay IMG investors and that
28 deposits from IMG were funding JHMS.

1 68. In or about late 2008, the BIA gave notice to BofA it was no longer
2 guaranteeing the tribe's loan and BofA gave notice to Enkoji at CB&T it was not renewing
3 SLOC #3082234. In response, Enkoji authorized the submission of fabricated Purchase Orders
4 to BofA to collect the \$9 million before the BofA SLOC expired.

5 69. The Purchase Orders used to foreclose were fabricated by Deepal based on the
6 instructions from Buzz to Enkoji on **Exhibit 13** that "**any P/O ok per Buzz.**" CB&T was not
7 concerned with submitting to BofA "**the**" Purchase Orders which actually created the \$9
8 million in debt because CB&T knew there were no bone fide Purchase Orders reflecting actual
9 financial transactions between IMG and JHMS.

10 70. In February of 2009, Enkoji prepared solicitation materials for Deepal to use to
11 convince new investors to invest in IMG to secure loans made by CB&T to IMG.

12 71. Attached as **Exhibit 14** is a factual summary of Jun Enkoji's involvement in the
13 IMG Ponzi scheme prepared by Ian Craig, the attorney for JTS Communities. JTS lost over \$25
14 million in the IMG scheme. **Exhibit 14** details the activities of Buzz Minson, Dawn Satow, and
15 other employees in 2008 and 2009 which establish CB&T's knowledge of the IMG.

16 72. **Dawn Satow** worked at the Sacramento Regional Commercial division of CB&T
17 and filed a declaration attesting to the authenticity of the nine Promissory Notes, 20 extensions
18 on the due dates for repayment, and 20 plus swaps of collateral entered into between IMG and
19 CB&T. Her declaration is submitted as **Exhibit 18** to this complaint. As noted in **Exhibit 14**,
20 Dawn Satow also played a critical role in the management of the IMG accounts at CB&T,
21 including monitoring investor deposits to force Deepal to make interest and principal payments.
22 For example on December 29, 2008, Satow emailed Jun Enkoji that she was monitoring IMG's
23 deposits and account balances to force Deepal's payment to CB&T:

24 Hi Jun...I think we need the approval documents asap, to officially
25 tie in the JTS CD to this loan. I am planning to make that paydown
26 of \$136,610.97 today, although there is not enough money in the acct.
 right now. Deepal says he is expecting funds today. Will keep
 checking.

27 ///

28

1 73. **Heddy Chiang** was the branch manager at CB&T's Arden Way, California
2 branch where IMG and Deepal did their banking business. Heddy met with Deepal at the branch
3 almost every day, sometimes twice a day when Deepal was depositing investors' money.
4 Heddy and Deepal had a very close, intimate and unusual relationship, as demonstrated by the
5 banter in their emails (i.e. on 4/18/06, Heddy emailed Deepal "I am all rejuvenated from sun in
6 San Diego, even got a tan!"). She introduced Deepal to investors as CB&T's "best customer."
7 Heddy Chiang would approve of loans to IMG to cover overdrafts and approve of waiving the
8 "hold" time on Deepal's deposits so that IMG could make lulling payments to perpetuate the
9 scheme. Heddy convinced customers of the bank to invest in IMG and assisted in documenting
10 their transactions. Heddy promoted IMG to the public.

11 74. **Kerrie Kinsey-Alexander** was a financial service representative and loan
12 specialist at the Arden Way, California branch of CB&T. Kerrie worked for Deepal on the side
13 and received money from Deepal at the Arden Way Branch.

14 **IV. AGENCY ALLEGATIONS**

15 75. Plaintiffs allege that the actions of the Defendant were done in collaboration and
16 collusion with the IMG while acting in furtherance of their agreement to perpetuate the
17 unlawful scheme. CB&T's agents working with IMG were acting in the course and scope of
18 their employment and agency with CB&T and the Defendants authorized or ratified the acts of
19 its agents as alleged herein.

20 **V. INFORMATION ALLEGATIONS**

21 76. Allegations made in this First Amended Complaint have been based on
22 information and belief, except those allegations that pertain directly to the Plaintiffs, which are
23 based on the Plaintiffs' personal knowledge. Plaintiffs' information and belief is based on, *inter*
24 *alia*, the investigation conducted by Plaintiffs and Plaintiffs' attorneys after their retention.
25 Each and every allegation and factual contention contained in this Complaint has evidentiary
26 support or, alternatively, is likely to have evidentiary support after reasonable opportunity for
27 further investigation or discovery by Plaintiffs or their counsel.

28 ///

1 **VI. DELAYED DISCOVERY OF ROLE PLAYED BY CB&T AND ESTOPPEL**

2 77. The original complaint in this case was filed on May 26, 2017 before the 3 year
3 anniversary of IMG's bankruptcy filed on May 30, 2014, and, within 1 year and 20 days of
4 learning the facts about CB&T's role as an aider and abettor of the primary tort feasons by
5 reading McFarland's fraudulent conveyance complaint filed on May 6, 2016.

6 78. Deepal was arrested in February of 2014 and pled guilty to running a large Ponzi
7 scheme on May 8, 2014. On May 30, 2014 IMG and Deepal both declared bankruptcy. Beverly
8 McFarland ("McFarland") was appointed the trustee of IMG. Since 2014, she has distributed
9 less than a penny per dollar of claims to the creditors of IMG. CB&T filed a creditor's claim in
10 the Deepal bankruptcy on or about June 25, 2014. CB&T did not file a creditor's claim in the
11 IMG bankruptcy.

12 79. On or about April 6, 2015, CB&T received a copy of McFarland's Subpoena for
13 Rule 2004 Examination (the "Subpoena") issued in the bankruptcy case designated as *In re*
14 *International Manufacturing Group, Inc.*, Case No. 14-25820-D-11 (Bankr. E.D. Cal.). The
15 subpoena issued by McFarland demanded CB&T to produce all documents related to the
16 banking relationship between CB&T and IMG which would have included the intimate
17 communications between Buzz Minson and Deepal contained in Buzz's lap top computer.
18 CB&T did not produce to McFarland the emails between Deepal and Buzz or other relevant
19 information contained on Buzz's computer.

20 80. Buzz Minson used a lap top to conduct business at CB&T with IMG from no
21 later than 2005 to 2014. The hard drive on the lap top contained his communications with
22 Deepal regarding the operations of IMG and his knowledge it was a Ponzi scheme. Buzz's lap
23 top contained critical evidence relevant to the date that CB&T discovered that IMG was
24 operating a Ponzi scheme.

25 81. Buzz Minson died in or about February of 2016. Buzz's wife, Sherrie Minson,
26 transferred Buzz's lap top computer to CB&T soon after he passed. At some undisclosed date
27 after mid-March of 2016, CB&T destroyed Buzz's computer and the data contained therein.
28 CB&T wiped the hard drive clean. The data destruction injured the Plaintiffs ability to

1 prosecute CB&T, proves the ratification of Buzz's intent to assist Deepal's scheme, and estopps
2 CB&T from claiming the Plaintiffs complaint is untimely because Plaintiffs had ready access to
3 the information identifying and implicating CB&T as an aider and abettor between May 8, 2014
4 and May 30, 2014. CB&T's admission it destroyed critical evidence is contained in the
5 discovery files of the litigation entitled *JTS Communities, Inc., et al., v. ZB, N.A., dba CB&T*,
6 case No. 34-2017-0213368 pending the Sacramento County Superior Court before the
7 Honorable Christopher E. Krueger. The admission by CB&T is as follows:

8 **REQUEST NO. 44 by the JTS Plaintiffs:**

9 Requesting Party hereby demands that YOU produce for inspection and forensic
10 imaging the original laptop computer used by MINSON during his employment
with YOU.

11 **RESPONSE TO REQUEST NO. 44 by CB&T:**

12 ZIONS has conducted a diligent search and reasonable inquiry for Royal
13 Minson, II's original ZIONS issued laptop, and has discovered that it no longer
14 exists. Specifically, upon information and belief, Royal Minson, II's laptop was
15 returned to ZIONS's Walnut Creek branch located at 1277 Treat Blvd #120,
16 Walnut Creek, CA 94597 in mid-March 2016, shortly after his death in February
17 2016. From there, Mr. Minson's ZIONS issued laptop was delivered ZIONS's IT
18 department. Following its normal procedure, ZIONS's IT department transported Mr.
19 Minson's ZIONS issued laptop off-site to a ZIONS warehouse and extracted the
original hard drive to be wiped and repurposed, which ZIONS believes
occurred. Mr. Minson's ZIONS issued laptop was returned to ZIONS and its
hard drive was removed and processed for repurposing before any actions arising
from Deepal Wannakuwatte' s purported Ponzi Scheme were filed against ZIONS.
(Emphasis Added).

20 82. IMG and Deepal both filed for bankruptcy on May 30, 2014. The May 30, 2014
21 filing by IMG was the first communication by IMG to Plaintiffs that it would not honor the
22 terms of the Promissory Notes it issued to investors and notice that there were insufficient funds
23 inside the IMG bankruptcy estate to pay the principal owed each creditor on the outstanding
24 Promissory Notes.

25 83. The section 362 stays entered in the bankruptcies of IMG and Deepal disabled
26 the Plaintiffs from suing the primary tort feasons, including doe allegations in their complaints,
27 and conducting formal discovery to identify aiders and abettors of the primary tort feasons. After
28 May 30, 2014, the Plaintiffs discovery of the identity of CB&T as an aider and abettor required

1 the diligent investigation by McFarland who was charged with the responsibility of acting at the
2 behest of IMG's creditors, including these named Plaintiffs. To date, CB&T has refused to
3 produce to Plaintiffs any documents, despite the fact that it already made productions to the
4 Trustee and to certain individual investors' non-class claims in California State Court.

5 84. After May 30, 2014 the statute against the primary tort feasons was tolled. After
6 May 30, 2014 the Plaintiffs' were unable to discover the elements of their causes of action
7 against CB&T until the factual allegations contained in the trustee's fraudulent conveyance
8 complaint against CB&T were filed on May 6, 2016. Despite diligent investigation of the
9 circumstances of their injury, before May 6, 2016 it was not reasonably possible for the
10 Plaintiffs to obtain facts about CB&T's confidential relationship with IMG to establish CB&T's
11 obvious knowledge and conscious decision to assists IMG.

12 **VII. CB&T DISCOVERED THE IMG PONZI SCHEME NO LATER THAN**
13 **OCTOBER 2009 AND MOST LIKELY MUCH EARLIER**

14 85. Deepal was arrested on February 21, 2014, entered a guilty plea on May 8, 2014
15 and is currently serving 20 years in Federal Prison in Lompoc. See *USA v. Deepal*
16 *Wannakuwatte*, Case No. 2:14-cr-067 TLN and Deepal's plea agreement with Factual Basis for
17 Plea at Docket No. 21-2 in this case. The Plaintiffs incorporate the facts attested to by Deepal in
18 his signed Factual Basis for Plea as if set forth herein.

19 86. As stated by the primary tort feasor, Deepal ran a Ponzi scheme from 2002 to
20 2014 telling investors he had yearly \$100 million contracts with the VA that simply needed
21 investor funding for him to satisfy. It was all a lie. There was no real income. The defrauded
22 investors' money was the financial universe of the IMG wholesale business. With such a
23 limited universe, money would not be created but simply rearranged – **it was all investor**
24 **money paying CB&T.**

25 87. The Plaintiffs contend that the available evidence construed with common sense
26 leads to the reasonable conclusion that CB&T knowingly allowed the Ponzi scheme to be run
27 through its bank long enough to be repaid the \$21 million it had loaned to IMG and long enough
28 to make a \$3 million profit; while all of the other investors with no access to the financial

1 records lost \$100 million.

2 **A. IMG's Business Model and the Loans from CB&T to IMG**

3 88. IMG's business allegedly consisted of the importation of latex surgical gloves
4 and related medical products manufactured in Asia for re-sale in the United States. IMG's
5 business purportedly involved two distinct divisions, a "retail" division and a "wholesale"
6 division.

7 89. IMG's "retail" business, which provided gloves to medical offices and other
8 small businesses, was relatively small and it generally lost money or broke even each year it
9 operated. The existence of the retail business gave investors and the employees at CB&T the
10 physical observation that IMG was, at a minimum, dealing in medical gloves which were seen
11 on shelves in the IMG office locate at 879 F Street in Sacramento. The CB&T employees
12 identified in the complaint visited the IMG office on F Street on multiple occasions.

13 90. IMG's "wholesale" business purportedly comprised IMG's true revenue stream,
14 which IMG claimed to exceed \$100 million annually. However, IMG's "wholesale" division
15 had no employees, no accounts payable, and no accounts receivable. IMG's "wholesale"
16 division was a complete sham. It was the faux front.

17 91. At the outset of the fraudulent scheme, IMG solicited investors to provide cash
18 for purported wholesale shipments of latex surgical gloves from Asian manufacturers to IMG's
19 purported customers, primarily to the Veterans Affairs (the "VA"). The cash was paid in
20 exchange for promissory notes issued by IMG. Copies of these notes are set out in **Exhibits 7**
21 **and 8**. The Plaintiffs received the notes in exchange for cash paid by personal checks written to
22 IMG and deposited into account #4841 as set out in **Exhibits 4 and 5**.

23 92. IMG investors were promised that their money would fund the purchase of such
24 shipments, and that in so doing, they were financing IMG's highly profitable wholesale
25 inventory purchases. In exchange for investing cash, investors were provided promissory notes
26 reflecting short-term repayment with annual returns of 12% or more.

27 93. No later than 2005, CB&T understood that the cash investors intended their
28 funds to be used solely to purchase latex gloves in Asia. No later than 2005, at the request of

1 IMG, CB&T actually solicited its own banking clients to invest in IMG. At least two bank
2 customers invested because of the recommendations by Heddy Chiang. The stated purpose for
3 the investments was the financing of IMG's purchase of latex gloves in Asia. CB&T handled all
4 of the investment paperwork and the bank served as the source of the investors' fund, by
5 loaning them money secured by their homes. As instructed by IMG, CB&T transferred control
6 over the home-loan proceeds, not to the investors, but directly to IMG. Heddy Chiang assured
7 these customers of CB&T that Deepal was trustworthy and the bank would monitor their
8 investments.

9 94. CB&T claims that this evidence created in 2005 is evidence of lack of
10 knowledge of the IMG fraud. Plaintiffs do not content that CB&T's solicitation of its own
11 customers to invest in gloves in 2005 is evidence of the bank's knowledge of the Ponzi scheme
12 in 2005. Plaintiffs contend it is evidence of CB&T's knowledge, acquired no later than 2005
13 that IMG was soliciting investors and that investor money was the source of the funds being
14 deposited at CB&T. The Plaintiffs do allege that the banks relationship with these two
15 customers did establish knowledge of the fraud by 2009 because the debt owed them by IMG
16 was never repaid so their loans from CB&T secured by their homes could not be repaid as was
17 promised by Heddy.

18 95. In addition to CB&T and IMG soliciting cash investors, IMG convinced certain
19 investors to obtain SLOCs in favor of CB&T to fund IMG's wholesale inventory. CB&T knew
20 and understood the intent of the investor SLOCs and CB&T accepted the investor SLOCs as
21 collateral for over \$21 million in nine loans CB&T made to IMG from 2005 to 2011. The loans
22 are summarized in **Exhibit 15** and are identified as follows:

23 (i) Loan No. 168068-001 in the amount of **\$897,000** issued with a Promissory Note
24 dated 8/12/05.

25 (ii) Loan No. 168068-0004 in the amount of **\$1,500,000** was issued with a
26 Promissory Note dated 5/17/06 with a Maturity Date of 5/31/07. On 6/26/06, a Change in
27 Terms was issued to increase the line from \$1,500,000 to **\$9,000,000** and the change of
28 collateral to include the \$9,000,000 BofA Letter of Credit.

1 (iii) Loan No. 168068-9001 for **\$3,278,121** was issued with a Promissory Note dated
2 4/2/08 with a Maturity Date of 4/1/09.

3 (iv) Loan No. 168068-9001 for **\$2,961,804** was issued with a Promissory Note dated
4 6/13/08 with a Maturity Date of 5/8/09.

5 (v) Loan No. 168068-9003 for **\$2,000,000** was issued with a Promissory Note dated
6 10/29/08 with a Maturity Date of 11/5/09.

7 (vi) Loan No. 181803-0001 for **\$250,000** was issued with a Promissory Note dated
8 7/14/06 with a Maturity Date of 3/5/07

9 (vii) Loan No. 181803-0003 for **\$2,000,000** was issued via a Promissory Note dated
10 2/17/06 with a Maturity Date of 1/31/07.

11 (viii) Loan No. 181803 for **\$300,000** was issued via a Promissory Note dated 1/17/07
12 with a Maturity Date of 12/4/07. The collateral included a \$100,000 Zion Bank Letter of Credit

13 (ix) Loan No. 181803-9001 for **\$600,000** was issued via a Promissory Note dated
14 9/12/07 with a Maturity Date of 9/5/08.

15 **Total Loans from CB&T to IMG: \$21,286,925**

16 **B. The Audits for the Extensions of the Loans Granted IMG by CB&T**
17 **Revealed a Ponzi Scheme**

18 96. Plaintiffs do not contend that CB&T discovered IMG was operating a fraud as
19 early as 2005. Plaintiffs contend that CB&T's knowledge of the fraud came later, but no later
20 than 2009. As IMG failed to repay CB&T and its security appeared suspect, CB&T
21 investigated IMG out of self-preservation. It was self-preservation that caused the bank to cease
22 further lending to IMG. It was also self-preservation that keep IMG's depository accounts open
23 until 2014 so CB&T could be repaid all of its loans and pocket a \$3 million profit.

24 97. CB&T's 9 loans to IMG totaling \$21,286,925 are graphically depicted in
25 **Exhibit 15**. **Exhibit 15** is based on **Exhibit 18** which is the Declaration of Dawn Satow
26 containing all of the IMG loan documents. Dawn Satow worked for CB&T.

27 98. In credit reports generated at the inception of CB&T's loans to IMG, CB&T
28 concluded that Deepal and IMG were not credit worthy, but it would lend the money anyway.

1 CB&T made the nine loans based solely on the value of the security being pledged and not on
2 IMG's perceived ability to repay the loans from ongoing business operations. The 9 loans were
3 made with the bank's conscious conclusion in 2005 that it was more probable than not that the
4 ultimate repayment would come from foreclosure on the collateral and not from IMG buying
5 and selling gloves, or the personal guarantee of Deepal Wannakuwatte. At the end, CB&T did
6 not foreclose on the Sacramento SLOC's and instead it was repaid from IMG's business
7 operations and IMG's business operation was running a Ponzi scheme.

8 99. The graphic depiction of the loans in **Exhibit 15** demonstrate that CB&T
9 continually extended the life of the loans that were near default, if not already in default.

10 100. The lending relationship between IMG and CB&T morphed from loan-to-own by
11 foreclosure to avoiding foreclosure at all costs. CB&T ignored IMG's defaults and waived late
12 charges and interest penalties. CB&T continually juggled its collateral (over 20 times), issued
13 Changes in Terms (over 27 times), issued loan Maturity Date Extensions (over 20 times),
14 adjusted loan rates of interest (over 20 times), and accepted or altered Personal Guarantees from
15 Wannakuwatte (at least 7 times). Why?

16 101. Each contractual modification in the lending relationship between IMG and
17 CB&T set out in **Exhibit 18** required CB&T to make conscious decisions intended to benefit
18 itself. The loan modifications were deliberate, intended by CB&T to steer the bank onto the
19 safest route to receive repayment. The surest route was repayment from newly defrauded
20 investors in IMG.

21 102. By statute, each loan modification required the bank to identify where its loan
22 proceeds went and the source of the money used by IMG to pay CB&T. Each loan modification
23 was made and based on CB&T's conclusion that IMG had defrauded CB&T, that CB&T could
24 avoid injury only by shifting its loss onto others, and to shift the loss to others IMG had to
25 remain active with deposit accounts operational at CB&T.

26 103. As set out in **Exhibit 17**, CB&T's affiliate Zions Bank loaned money to Wannas
27 with the loan guaranteed by IMG. In 2007, Zions Bank demanded evidence of IMG's solvency.
28 In 2009, Zions Bank repeated the demand and threatened default. IMG's refusal to provide that

1 information, including financials “reviewed” by an independent CPA, was an admission by
2 silence of IMG’s insolvency known to Zions Bank no later than January 8, 2009. See **Exhibit**
3 **17**.

4 **C. CB&T’s Foreclosure of the Indian Tribe’s SLOC Gave CB&T Knowledge**
5 **that IMG was a Ponzi scheme.**

6 104. CB&T refused to foreclose on the 8 SLOCs pledged as security by the local
7 Sacramento investors for \$12 million. CB&T was forced however, to foreclose on the \$9
8 million SLOC issued by the BofA for the non-local Seattle area Indian tribe because the BIF
9 decided to terminate the government guarantee.

10 105. Loan No. 168068-0004 was the loan from CB&T to IMG secured by the assets
11 of the Jamestown S’Klallam Tribe. The documents evidencing the loan are attached as **Exhibit**
12 **18**. The loan was first given in the amount of \$1,500,000 and then increased to \$9,000,000.
13 The collateral was the \$9,000,000 BofA SLOC which is attached as **Exhibit 13**.

14 106. **Exhibit 13** provided that payment under the SLOC would require: (i) CB&T’s
15 written notice to BofA that IMG had defaulted on credit extended by CB&T for a specified
16 amount; and (ii) BofA’s receipt of purchase orders (“Purchase Orders”) demonstrating imported
17 supplies sold by IMG to JHMS.

18 107. The “JHMS Loan” from CB&T to IMG of \$9 million was expressly for the
19 “purchase of inventory relating to purchases by Jamestown Health and Medical Supply
20 Company. LLC, under Distribution Agreement dated October 26, 2005, and supported by
21 copies of purchase orders submitted pursuant to each advance requested.”

22 108. The first sixteen purported JHMS Purchase Orders provided by IMG to CB&T
23 were as follows:

24 ///
25 ///
26 ///
27 ///
28 ///

	PO Number	Date	Amount
1	PO0000001	5/15/2006	\$1,014,200.00
2	PO0000002	6/5/2006	\$55,200.00
3	PO0000003	6/15/2006	\$408,243.00
4	PO0000004	6/28/2006	\$1,853,799.50
5	PO0000005	8/16/2006	\$1,582,284.00
6	PO0000006	8/29/2006	\$411,542.00
7	PO0000007	9/28/2006	\$321,120.00
8	PO0000008	10/19/2006	\$262,548.00
9	PO0000009	11/29/2006	\$974,490.00
10	PO0000010	12/21/2006	\$1,765,759.50
11	PO0000011	1/25/2007	\$925,540.00
12	PO0000012	2/20/2007	\$732,662.00
13	PO0000013	4/9/2007	\$420,200.00
14	PO0000014	6/4/2007	\$670,758.00
15	PO0000015	8/2/2007	\$262,548.00
16	PO0000016	1/18/2008	\$405,900.00

109. CB&T transferred the loan proceeds to IMG's General Account based on the above JHMS Purchase Orders as they were received. By the middle of 2007, IMG's loan balance was \$6.5 million and by the middle of 2008 it was \$8.3 million.

110. CB&T knew that IMG was not paying interest or principal to CB&T with JHMS "sale" proceeds paid to IMG because there were minimal payments from JHMS to IMG. Repeatedly, IMG drew down on the JHMS Loan in order to obtain funds to cover the interest and principal owed on draws taken six months earlier. IMG was borrowing money from CB&T to pay for loans from CB&T. The repeated practice of borrowing to pay for prior borrowing, which CB&T monitored to ensure repayment, evidenced the reality that there were no "sales" proceeds paid to IMG by JHMS.

111. CB&T's knowledge of IMG's lack of income from JHMS, other than investor deposits, was memorialized in writing. For example, a \$408,243 bankers' acceptance was set to mature in December 2006 requiring IMG to pay CB&T \$408,243. CB&T's Jun Enkoji e-mailed Wannakuwatte (copying CB&T's Dawn Satow and CB&T's Heddy Chiang) stating: "International Banking Group will debit the account for that amount (\$408,243)... **Please make sure you will have a sufficient/collected funds available in the account**" to pay CB&T.

1 Wannakuwatte responded that the CB&T line of credit would need to be temporarily drawn
2 down to pay the CB&T bankers' acceptance. In substance, CB&T would have to loan money to
3 IMG for IMG to pay back CB&T.

4 112. On May 17, 2007 CB&T forced IMG to create a lock box account to protect
5 itself. CB&T had Deepal of IMG sign an Agreement for Assignment of Payments, Proceeds and
6 Distributions (the "Assignment of JHMS Payments"). The assignment or lock box agreement
7 irrevocably assigned to CB&T any and all "rights to receive payments, proceeds and other
8 distributions" from JHMS. It required IMG to irrevocably instruct JHMS to pay to CB&T any
9 payments owed IMG for gloves while IMG promised CB&T that "any payment, proceeds or
10 other distribution" received would be deposited into a CB&T controlled lock box account.

11 113. CB&T was aware of the lack of incoming payments from JHMS to IMG because
12 there were no payments into its own controlled account. There were no deposit because there
13 were no sales because there were no gloves – it was all a big scam.

14 114. As 2008 progressed, advances on the JHMS Loan ceased and there were no
15 repayments. After six months of no activity CB&T sent Deepal an inquiry asking when JHMS
16 would pay IMG so IMG could pay CB&T. In response, Deepal provided CB&T a letter dated
17 November 23, 2008, addressed to IMG, stating:

18 Dear Deepal:

19 This is to confirm that Jamestown Health & Medical Supply currently owes IMG,
20 Inc. approximately \$9,147,685.50. The Government receivable makes it very
21 difficult to collect funds on a 60 day term. The indebtedness is secured to your
22 company by a standby letter of credit from Bank of America. We will honor this
23 commitment, even though there is a 60 day invoice clause in your standby letter
24 of credit.

25 We are also aware that you have a difficulty in keeping the 60 day clause on the
26 letter of credit. We will try to resolve this matter to satisfy your needs at our next
27 board meeting which is scheduled for the end of January, 2009.

28 115. The November 23, 2008 letter from IMG to Deepal transmitted to CB&T
disclosed to CB&T that the \$9 million in loans to IMG by CB&T were missing which must
have caused CB&T some anxiety because JHMS had failed to make any payments into the lock

1 box account pursuant to the Assignments of JHMS Payments. For JHMS to admit that it still
2 owed IMG \$9,147,685.50 in late 2008 for gloves sold to JHMS in 2006 meant that the \$9
3 million loaned to IMG to manufacture the gloves was missing. \$9 million was loaned by CB&T
4 to IMG to buy gloves in Asia to sell to JHMS and JHMS had not paid IMG \$9 million for the
5 Asian gloves or any gloves. Again, Ponzi schemes do not make money, the money is simply
6 rearranged.

7 116. CB&T recognized that without the BIA guaranty the BofA SLOC would not be
8 renewed and CB&T's JHMS Loan would necessarily unravel because CB&T was not willing to
9 take on the risks presented by IMG's fraudulent "import business. The unraveling began in
10 early 2009 when the BIA declined to extend its 90% guarantee.

11 117. On March 27, 2009, Deepal wrote to Jun Enkoji to inform him that efforts were
12 underway to get the BofA to extend the SLOC "for another three months." However,
13 Wannakuwatte also wrote, "I want to be clear that if this is not accomplished, I will forward you
14 **all the new purchase orders** on April 20, 2009 and I want the bank to draw down on the letter
15 of credit as per the advice of my attorneys." (Emphasis added).

16 118. This March 27, 2009 letter to CB&T's Jun Enkoji must have been written by
17 Buzz Minson working for Deepal because: (i) Deepal's claim that he would forward "all the
18 new purchase orders" made no sense as simply there were no "new purchase orders." The
19 JHMS Loan had sat dormant for 6 months and the amounts outstanding under the JHMS Loan
20 were for ancient Purchase Orders. In addition, no funds had been deposited into the lock box
21 account under CB&T's control to receive "sales" proceeds so that further loans could be
22 extended to cover new Purchase Orders.

23 119. There was close to \$900,000 left to be loaned to IMG on the \$9 million JHMS
24 loan. The balance owed on January 30, 2009 was \$8,084,151.00 so there was approximately
25 \$900,000 remaining on the BofA SLOC in CB&T's favor. Recognizing that it was going to
26 foreclose on the tribe's security, CB&T knew that once it did, IMG's debt on the other 8 loans
27 would total over \$13 million, but that amount could be reduced by an additional \$900,000 if
28 CB&T drew down the total \$9 million from the BofA SLOC rather than only \$8.1 million.

1 120. CB&T had Deepal send a “new” Purchase Order in the summer of 2009 for
2 \$878,605.40 which enabled CB&T to foreclose on the full BofA SLOC, effectively forcing
3 BofA to pay additional funds which reduced IMG’s overall debt to CB&T or, the money was
4 used by IMG as lulling payments to investors. By fraud, BofA was forced to pay CB&T
5 \$9,010,571.68, including fees.

6 121. Both the Jamestown Tribe and BofA were immediately suspicious that CB&T
7 had submitted bogus “sales” invoices to support the \$9 million draw down and shift the risk
8 away from CB&T. The tribe’s CFO, Diane Gange, e-mailed Wannakuwatte requesting copies
9 of the “Purchase Orders” used to support the CB&T draw down. Deepal responded that he
10 would “get the copies of the purchase orders, which were provided to CB&T at the start of our
11 business venture to build inventory to supply JHMS customers on time.” Diane Gange
12 forwarded this e-mail to Don Schulke of BofA, who replied: **“This is BS.”** Gange wrote back:
13 **“You think!! He’s trying to cover his ... because he knows I’m going to question the dates**
14 **when he sends them.”** Schulke then responded: **“you need to get your auditors in the door.”**
15 Litigation between IMG, BofA and the Tribe followed.

16 122. On October 21, 2010, BofA filed suit against JHMS and the Jamestown Tribe in
17 the Superior Court of Washington for King County (the “Superior Court”), Case Number 10-2-
18 37091-SEA. On May 12, 2011, the Jamestown Tribe filed a third-party complaint against IMG
19 and Wannakuwatte, including claims for civil conspiracy. CB&T monitored the litigation
20 which contended that the Purchase Orders submitted by CB&T were bogus.

21 123. In October 2009, CB&T’s terminated its lending relationship but maintained its
22 depository relationship with IMG in a letter to Wannakuwatte and IMG, which stated:

23 Although all facilities are secured, either by cash or letters of credit, there has
24 **been little to no revolving of the outstanding balances and we have**
determined not to renew the facilities as they mature.

25 We are providing this notice of our intent to disengage from the Lending
26 relationship...

27 (emphasis added).

28 ///

1 **D. CB&T's Knowledge of the Ponzi Scheme Is Also Evidenced By Its**
2 **Anticipation of the IMG Bankruptcy and the Trustee's Effort To Recover**
3 **Fraudulent Transfers From IMG to CB&T**

4 124. The loan documents in **Exhibit 18** provided that CB&T had a security interest in
5 the IMG General Account and the IMG Wholesale Account. So long as investors' deposits
6 were deposited into the Wholesale Account and then transferred to the General Account to be
7 transferred to CB&T as the repayment by IMG of the debt owed to CB&T, then CB&T could
8 argue in bankruptcy that there were no fraudulent transfers because there were no transfers.

9 125. CB&T filed pleadings stating that funds in account #4841 transferred to CB&T
10 to repay the \$12.2 million in loans to IMG were not "transfers" so they could not be fraudulent
11 transfers because CB&T had a security interest in those funds on deposit prior to repayment.
12 The argument was made by CB&T in its motion to dismiss Trustee McFarland's complaint in
13 August 2016. See **Exhibit 16** which contains the Pleading caption sheet and the Motion's Table
14 of Contents summarizing CB&T's argument.

15 126. CB&T filed **Exhibit 18**, the Declaration of Dawn Satow in support of its transfer
16 argument. The documents attached to the Sadow Declaration demonstrates CB&T's knowledge
17 that the money in which CB&T claimed a "security interest" was known to the bank to be
18 investor deposits.

19 **VIII. CLASS ACTION ALLEGATIONS**

20 127. Plaintiffs bring this action on their own behalf and also as Class representatives
21 pursuant to Federal Rules of Civil Procedure, Rule 23. The Class is defined, for now, as:

22 Those persons that suffered net loss damages by providing money
23 to IMG for IMG's alleged purchase of wholesale medical goods
24 overseas for importation and domestic resale after CB&T acquired
25 knowledge that IMG was not acquiring medical goods overseas for
26 importation and domestic resale (herein referred to as the
27 "Members of the Class" or the "Class Members").

28 Excluded from the definition of the Class are the Defendants and any person, corporation, or
other entity related to, controlled by or affiliated with the Defendants. Also excluded from the
class are persons who invested money in IMG and were repaid by IMG principal or interest,

1 such that the total amount repaid exceeds the total amount invested. Included in the term
2 "Persons" in the definition of the Class are entities, representatives of these entities and
3 assignees.

4 128. The members of the Class are so numerous that joinder of all of them is
5 impracticable. There are dozens of Class Members residing in California and elsewhere. At
6 present, it is believed that there are between 50 and 100 Class Members.

7 129. There are questions of law and fact which are common to the Class and which
8 predominate over questions affecting any individual Class Member. The common questions
9 include, *inter alia*, the following:

- 10 a. Did IMG commit fraud on the persons investing in IMG?
- 11 b. Did IMG misrepresent to investors that the investors' funds would be used to
12 purchase actual product as part of a wholesale business?
- 13 c. Did IMG disclose to investors that their money would not be used to purchase
14 product, but instead, would be used to pay back other investors?
- 15 d. Did CB&T know that IMG was committing fraud on persons investing in
16 IMG?
- 17 e. The date CB&T acquired knowledge that IMG was committing fraud on
18 persons investing in IMG?
- 19 f. Did the Class Members purchase unregistered securities from IMG?
- 20 g. Did CB&T knowingly provide substantial assistance to the fraud committed
21 by IMG by physically accepting and dispersing the investors' money derived from false
22 pretenses?
- 23 h. Did CB&T knowingly provide substantial assistance to IMG in the sale of
24 unregistered securities to the persons investing in IMG?
- 25 i. Did CB&T violate Penal Code section 496?

26 130. The claims of the Plaintiffs are typical of the claims of the Class as a whole. The
27 Plaintiffs are members of the Class and have suffered harm and are likely to continue to suffer
28 harm due to the misconduct alleged herein. The class claims based upon uniform

1 misrepresentation are properly certifiable. *Vasquez v. Superior Court*, 4 Cal. 3d 800 (1971).
2 The named Plaintiffs and other Class Members were informed of their injury by IMG's
3 bankruptcy filing on May 30, 2014.

4 131. Plaintiffs will fairly and adequately protect the interests of the Class. The
5 interests of Plaintiffs are consistent with and not antagonistic to the interests of the Class.
6 Plaintiffs have sought out and retained counsel experienced in complex class actions in an effort
7 to recover their damages. Plaintiffs have agreed to act for the benefit of all persons similarly
8 situated and not to put their individual interest ahead of any member of the Class.

9 132. The prosecution of a multitude of separate actions by individual members may
10 establish incompatible standards of conduct for the parties opposing the Class, may
11 substantially impair or impede the interests of other members of the Class to protect their
12 interests, and will result in waste.

13 133. The acts and actions of the Defendants applicable to the Plaintiffs apply
14 generally to the Class, thereby making the final relief granted by the Court to the Plaintiffs
15 applicable to the Class as a whole.

16 134. This Class Action would be superior to other available methods for the fair and
17 efficient adjudication of the controversy between the parties. The interest of most members of
18 the Class in individually controlling the prosecution of separate actions appears low, due to the
19 complexity of the case. Most members would be unable or unwilling to individually prosecute
20 an action without joining their claims with other claimants which is generally difficult.
21 Separate suits would be impractical because of the number of victims and the dollar amount at
22 stake for each victim. Concentrating litigation in this forum will also promote judicial
23 efficiency.

24 135. This proposed Class Action is very manageable because the issues at stake for
25 each Class Member are the same, the Class Members lost enough to want to participate, the
26 number of Class Members make prosecution of the collective claims efficient, the documents
27 establishing liability and the loss amounts are in Sacramento with CB&T and the bankruptcy
28 trustee, and the criminal prosecution of Wannakuwatte took place in Sacramento. In IMG's

1 bankruptcy, CB&T claims that it does not have to disgorge the transfers made by IMG to
2 CB&T because the money came from IMG's Wholesale Account and General Account. Both
3 accounts were pledged as security for the loans made by CB&T to IMG. According to CB&T,
4 as a secured lender receiving after-acquired property deposited into an account which was
5 previously pledged as collateral, there were no "transfers", so there cannot be any fraudulent
6 transfers subject to disgorgement. See **Exhibit 16**.

7 136. CB&T made roughly \$3 million in profit on its lending relationship with IMG.
8 IMG owes over \$100 million to the not so lucky and defrauded investors. The Plaintiffs have
9 sued CB&T for knowingly aiding and abetting the fraud of IMG for roughly 5 years - from at
10 the latest 2009 going forward into 2014 - by allowing IMG to continue to operate account #
11 4841 at CB&T to receive and disburse stolen money. CB&T's knowledge of IMG's fraud
12 acquired no later than 2009 is not just plausible, the bank's scienter is beyond a reasonable
13 person's doubt.

14 **IX. CLAIMS**

15 **FIRST CLAIM**

16 **Aiding and Abetting Fraud**

17 137. Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

18 138. IMG defrauded investors by falsely promising to purchase overseas inventory
19 with the investors' funds, including Class Members' funds, and instead used the funds for other
20 purposes. By October 2009, when CB&T stopped lending additional money to IMG, CB&T had
21 actual knowledge of the primary wrong of fraud being committed by IMG-misrepresentations
22 and omissions regarding whether investors' funds were used to purchase overseas inventory—
23 and notwithstanding this knowledge, CB&T provided substantial assistance to the intentional
24 tort committed by the primary wrongdoer by, among other things, continuing to accept
25 defrauded investor deposits and then disbursing these investments as "returns", or lulling
26 payments to investors. Plaintiff were injured when IMG filed for bankruptcy on May 30, 2014.

27 139. As the direct and proximate result of Defendant's aiding and abetting the fraud,
28 the scheme continued and ensnared Plaintiffs causing them to be damaged in amounts to be

1 proven at trial. CB&T tried to save itself by intentionally injuring the Plaintiffs and each
2 member of the class. The conduct of CB&T was intentional, willful, malicious, and oppressive,
3 by virtue of which Plaintiffs pray for, and should be awarded exemplary and punitive damages.

4 **SECOND CLAIM**

5 **Misrepresentation in the Sale of Securities**

6 **Violations of Cal. Corp. Code §§ 25110, 25401 & 25504.1**

7 140. Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

8 141. California Corporations Code section 25401 provides that it is unlawful for any
9 person, in connection with the offer or sale of a security to directly or indirectly employ a
10 scheme to defraud by making untrue statements of material fact or to omit to state a material
11 fact necessary to make the statements made not misleading, or to engage in a course of business
12 that operates as a fraud or deceit upon another person.

13 142. IMG developed a scheme in violation of Section 25401, by offering or selling
14 securities in the form of Promissory Notes to investors, including Plaintiffs, by making untrue
15 statements of material fact and by omitting to state material facts necessary to make the
16 statements made not misleading, or to engage in a course of business that operates as a fraud or
17 deceit upon another person.

18 143. California Corporations Code section 25110 provides that it is unlawful for any
19 person to offer or sell in California any security unless such security has been
20 qualified/registered or unless such security is exempted from such qualification/registration.

21 144. IMG, in violation of Section 25110, offered or sold to investors, including
22 Plaintiffs, securities in the form of Promissory Notes that were not qualified/registered and that
23 were not exempt from such qualification/registration. The Promissory Notes issued by IMG
24 were unlicensed Securities.

25 145. Corporations Code section 2550.1 provides that any person who materially
26 assists in any violation of Corporations Code sections 25401 or 25110, with the intent to
27 deceive or defraud, is jointly and severally liable with any other person liable for a violation of
28 sections 25401 or 25110.

1 146. CB&T materially assisted IMG and IMG's violation of Section 25401 by, among
2 other things:

3 (a) accepting investor deposits paid to IMG pursuant to the Promissory Notes
4 intended specifically to fund purchases of wholesale medical supplies overseas which CB&T
5 knew was not actually happening;

6 (b) Conspiring with CB&T to draw down \$9 million on the BofA SLOC to keep the
7 fraudulent scheme alive and defraud additional investors;

8 (c) Using irregular banking procedures by, among other things, lending huge sums
9 to IMG knowing full well that IMG was insolvent and its "import" business was a fraud used to
10 deceive investors;

11 (d) Allowing IMG checks to clear despite insufficient funds, which, had CB&T not
12 done so, would have exposed the existence of the fraudulent representations and terminated the
13 deception on investors; and

14 (e) Referring investors to IMG and preparing documents to obtain cash for IMG
15 from defrauded investors.

16 147. CB&T, at all relevant times, knew that IMG was a fraudulent scheme and that
17 IMG had been offering and selling to potential investors (such as Plaintiffs)
18 unregistered/unqualified securities that were based on material representations or omissions of
19 material fact. CB&T knew at all relevant times that securities sold by IMG were
20 unregistered/unqualified securities that were not exempt/qualified from registration.

21 148. CB&T possessed actual knowledge that IMG was a fraudulent scheme and was
22 selling and offering securities to investors, including Plaintiffs, that were not registered and that
23 were based on material omissions and material misrepresentations. CB&T's material assistance
24 of IMG caused people, including Plaintiffs, to invest money with IMG and to keep their money
25 in IMG once invested.

26 149. The aforementioned acts by CB&T were done intentionally in order to, among
27 other things, continue the relationship with IMG, which had been generating fees, interest and
28 the repayment of principal to CB&T.

1 150. As a direct and proximate result of the Defendant's misconduct, Plaintiffs have
2 been damaged in amounts to be proven at trial. Pursuant to Section 25504.01, CB&T is jointly
3 and severally liable with non-defendant IMG to Plaintiffs in amounts according to proof at time
4 of trial.

5 **THIRD CLAIM**

6 **Conspiracy to Commit Fraud**

7 151. Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

8 152. Armed with actual knowledge of IMG's fraud, CB&T formed and operated a
9 conspiracy with IMG to perpetuate IMG's fraudulent scheme to allow CB&T to be repaid on
10 the loans it made to IMG. CB&T agreed with IMG that CB&T would remain the depository
11 institution for the deposit of the investors' funds so that, in the future, it could claim in the
12 foreseeable claw-back litigation that IMG's repayments to CB&T were not fraudulent transfers
13 because CB&T maintained a security interest in those investors' funds on deposit with CB&T.
14 Overt acts in furtherance of this conspiracy continue today. CB&T engaged in wrongful conduct
15 in furtherance of the conspiracy.

16 153. Plaintiffs were directly and proximately damaged as a result of such wrongful
17 conduct in amounts to be proven at trial.

18 **FOURTH CLAIM**

19 **Aiding and Abetting Breach of Fiduciary Duty**

20 154. Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

21 155. The money transferred by the Plaintiffs to IMG was to be held and used by IMG
22 solely to fund the purchase of overseas product for domestic resale, and for no other purpose,
23 creating a fiduciary duty on the part of IMG in favor of Plaintiffs. CB&T knew the money
24 deposited into its IMG account was specifically earmarked to be used to purchase medical
25 products and for no other purpose. The agreement between IMG and each Plaintiff created a
26 fiduciary relationship of trust and confidence between the parties arising out of IMG's duty to
27 collect, account and then remit to Plaintiffs the proceeds from the sale of product acquired by
28 their loans. CB&T knew the terms and conditions of the agreements and understood that the

1 money was being entrusted to IMG for a specific purpose which CB&T knew would not happen
2 because the money was not being used to purchase product.

3 156. Moreover, the bank knew the solicitation of IMG investors was not issued to
4 strangers through brokerages or internet solicitations, but was all word of mouth in the tight
5 local community based on the community's clear substantive belief that "Deepal can be trusted
6 to act as a fiduciary for our investments." The bank knew IMG was defrauding Deepal's
7 friends in the community and people who looked up to Deepal as a respected 'elder' and trusted
8 pillar of the community. (See Exhibit 14 containing an email stating an investor was a close
9 friend of Deepal, which the bank knew in 2008). The bank, as part of the community, was
10 aware of the common belief that that Deepal was a senior statesman and leader of the tennis
11 community – a trusted 'elder'. A community must have elders who protect members of the
12 community without an arm's length agreement. Deepal was one of those trusted 'elders' and
13 CB&T knew it. Buzz Minson of CB&T pledged his loyalty to the 'elder'. The bank employees
14 held Deepal out to the community as a fiduciary and trusted 'elder'. Accordingly, CB&T knew
15 investors believed Deepal was a fiduciary and when CB&T discovered the Ponzi they knew
16 they were helping Deepal steal from beneficiaries of the fiduciary relationship which the bank
17 itself promoted to the community.

18 157. As the direct and proximate result of CB&T's aiding and abetting the breaches of
19 fiduciary duties owed to Plaintiffs by IMG, Plaintiffs have been damaged in amounts to be
20 proven at trial.

21 FIFTH CLAIM

22 **Intentional Interference with Contract**

23 158. Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

24 159. IMG had a contractual relationship with each Plaintiff and CB&T knew the
25 specific terms, conditions and obligations articulated in each contract entered into between each
26 Plaintiff and IMG.

27 160. CB&T induced, promoted, facilitated and assisted IMG in breaching each
28 contract with each Plaintiff by knowingly using the investors' money deposited for the specific

1 purpose of funding the acquisition and sale of product to pay other investors in breach of each
2 contract.

3 161. CB&T's knowing, tortious and unprivileged interference of the business
4 relationship between IMG and each Plaintiff damaged Plaintiffs by the breach of IMG's
5 contractual obligations in an amount to be proven at trial.

6 **SIXTH CLAIM**

7 **Violation of California Penal Code § 496**

8 162. Plaintiffs incorporate all prior paragraphs as if fully set forth herein.

9 163. Penal Code section 496(c) permits "any" person who has been injured by a
10 violation of section 496(a) to recover three times the amount of actual damages, costs of suit
11 and attorney's fees in a civil suit. Penal Code section 496(a) creates an action against "any"
12 person who (1) receives "any" property that has been obtained in any manner constituting theft,
13 knowing the property to be so obtained, or (2) conceals, withholds, or aids in concealing or
14 withholding "any" property from the owner, knowing the property to be so obtained. Under
15 Penal Code § 1.07(a)(38), "person" means "an individual, corporation, or association." CB&T,
16 as a national banking association, is a "person" capable of violating section 496(a).

17 164. As set forth herein, the investors' funds were obtained by IMG's theft, under
18 Penal Code section 484, by false or fraudulent representation or pretenses, in that, among other
19 things, investors were falsely informed their funds would be used to purchase and import
20 medical supplies for domestic resale.

21 165. CB&T, knowing that investors were falsely informed their funds would be used
22 to purchase and import medical supplies for domestic resale, aided in IMG's concealment of
23 such property by accepting the defrauded investors funds and disbursing it to earlier investors.

24 166. Additionally, CB&T, itself, has concealed and withheld property, and continues
25 to conceal and withhold property from Plaintiffs and other class members, property that was
26 obtained by false or fraudulent representations or pretenses. Authority for the viability of this
27 cause of action is found in *Bell v. Feibush* 212 Cal.App.4th 1041, 1044-1047 (2013) and *City of*
28 *Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 68 Cal.App.4th 445 (1998).

1 167. As a direct and proximate result of the acts and omissions described above, the
2 Plaintiffs were injured by the Defendant's violations of section 496(a). Pursuant to California
3 Penal Code section 496(c), Plaintiffs seek statutory treble damages, costs of suit, and reasonable
4 attorney's fees.

5 **X. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for Judgment against the Defendants as follows:

- 7 1. For certification of the Class as defined;
- 8 2. For the appointment of Plaintiffs as the Class Representatives and Plaintiffs'
9 counsel as counsel for the Class;
- 10 3. For special and consequential damages to Plaintiffs and Class members
11 measured, in part, by the net loss of their investments;
- 12 4. For rescission, to the extent applicable;
- 13 5. For treble damages;
- 14 6. For relief consistent with Cal. Probate Code § 859;
- 15 7. For relief consistent with Cal. Civ. Code § 3345;
- 16 8. For exemplary and/or punitive damages, as applicable;
- 17 9. For pre-judgment interest;
- 18 10. For costs of this action, including reasonable attorneys' fees as afforded by any
19 applicable law; and
- 20 11. For all other relief the Court deems just and proper.


21 **XI. JURY DEMAND**

22 Plaintiffs demand a jury trial.


23 Dated: October 15, 2019

Respectfully submitted,

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By 
Robert L. Brace
Attorneys for Plaintiff

HOLLISTER & BRACE
A Professional Corporation

By 
Michael I. Denver
Attorneys for Plaintiff

SUMMARY OF EXHIBITS

	<u>No.</u>	<u>Date</u>	<u>Description</u>
1			
2			
3	1.	6/17/2010	Heddy Chiang Constant Account Monitoring
4	2.	11/4/1009	Transaction Inquiry \$2.7 Million JTS Deposit
5	3.	7/7/2008	Notations Regarding "No Hold Per Heddy"
6	4.	1/22/2014	Evans Check for \$50,000
7	5.	2006 to 2013	Wholesale Account #4841 Account Statements
8	6.	8/28/2008	NVB Easily Spots Check Kiting by Deepal
9	7.	1/21/2014	Evans Promissory Note for \$50,000
10	8.	N/A	Other Form Promissory Notes
11	9.	1/21/2014	Evans Form Investment Agreements
12	10.	N/A	Other Form Investment Agreements
13	11.	9/19/2007	Buzz Minson's Dedication of Love to Deepal
14	12.	6/8/2006	Deepal Controls Both IMG and JHMS
15	13.	5/22/2006	BofA SLOC
16	14.	1/30/209	Ian Craig's 23 Page Letter Outlining in Detail the Fraud by CB&T Against JTS – Filed by CB&T as Exhibit K
17			
18	15.	N/A	Plaintiff's Summary of Loans From CB&T to IMG
19	16.	11/6/2017	CB&T's Argument "No Transfers" From #4841
20	17.	2007-2009	Zions Bank Demanding CPA "Review" IMG Financials
21	18.	2010	Declaration of Dawn Sadow with Loan Documents between IMG and CB&T
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