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FILED
CLERK, U.S. DISTRICT COURT
SEP - 5 2012
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

Attorneys for Plaintiff Neil Vacchiano

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 NEIL A. VACCHIANO,) Case No. CV 12-2003 DSF (VBKx)
11)
12 Plaintiff,)
13 vs.)
14 KEVIN W. WESSELL, ALPS) FIRST AMENDED COMPLAINT
15 CREDIT UNION ECONOMISK) [DEMAND FOR JURY TRIAL]
16 FORENING, INCWAY)
17 CORPORATION DBA)
18 COMPANIES INCORPORATED,)
19 CASEY LAWRENCE, RICHARD)
20 GUTIERREZ, PRESIDENTIAL)
21 SERVICES, INCORPORATED, 1-)
22 800-COMPANY, VALENCIA)
23 LOAN COMPANY, and DOES NO.)
24 1 THROUGH 10,)
25 Defendants,)

BY FAX
RECEIVED
BUT
NOT FILED
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CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

21 Plaintiff Neil A. Vacchiano (hereinafter, "Plaintiff" or "Mr. Vacchiano") alleges
22 upon information and belief the following for his First Amended Complaint:

23 I. THE PARTIES

- 24 1. Plaintiff Neil A. Vacchiano ("Vacchiano" or "Plaintiff") is, and at all times
25 relevant hereto, has been an individual residing in the State of Virginia.
26 2. Defendant Kevin W. Wessel ("Wessel" or "Defendant") is, and at all times
27 relevant hereto, has been an individual residing in the State of California. Wessel at all
28

1 times relevant hereto was an officer, director, manager, managing, member, owner,
2 authorized representative, and/or agent of each of the entity Defendants named herein.

3 3. Defendant Alps Credit Union Ekonomisk forening (“Alps” or “Defendant”)
4 is and at all times relevant hereto has been a business entity purportedly formed in
5 Sweden and purportedly residing in and with its principal offices in Stockholm, Sweden.
6 Plaintiffs are informed and believe that Defendant Kevin W. Wessel at all times relevant
7 hereto was an officer, director, shareholder, controlling person, and/or principal of
8 Defendant Alps Credit Union.

9 4. Defendant Incway Corporation dba Companies Incorporated (“Companies,
10 Inc.” or “Defendant”) is and at all times relevant hereto has been a corporation
11 incorporated in the State of Wyoming with its principal offices in Valencia, California.
12 Plaintiffs are informed and believe that Defendant Kevin W. Wessel at all times relevant
13 hereto was an officer, director, shareholder, owner, controlling person, and/or principal
14 of Defendant Companies Incorporated.

15 5. Defendant Casey Lawrence (“Lawrence” or “Defendant”) is and at all times
16 relevant hereto has been an individual residing in the State of California. Lawrence at
17 all times relevant hereto was an officer, director, manager, managing, member, owner,
18 authorized representative, and/or agent of each of the entity Defendants named herein, as
19 well as of Defendant Wessel.

20 6. Defendant Richard Gutierrez (“Gutierrez” or “Defendant”) is and at all
21 times relevant hereto has been an individual residing in the State of California.

22 7. Defendant Presidential Services, Incorporated (“PSI” or “Defendant”) is and
23 at all times relevant hereto has been a corporation incorporated in the State of Wyoming
24 with offices in Valencia, California, which it shares with Defendant Companies, Inc.
25 Plaintiffs are informed and believe that Defendant Kevin W. Wessel at all times relevant
26 hereto was an officer, director, shareholder, owner, controlling person, and/or principal
27 of Defendant PSI.

28 8. Defendant 1-800-Company (“800-Company” or “Defendant”) is and at all
times relevant hereto has been on information and belief a corporation or other entity

1 with offices in Valencia, California, which it shares with Defendants Companies, Inc.
2 and PSI. Plaintiffs are informed and believe that Defendant Kevin W. Wessel at all
3 times relevant hereto was an officer, director, shareholder, owner, controlling person,
4 and/or principal of Defendant 800-Company.

5 9. Defendant Valencia Loan Company (“Valencia” or “Defendant”) is and at
6 all times relevant hereto has been on information and belief a Nevada corporation with
7 offices in Valencia, California, which it shares with Defendants Companies, Inc., PSI,
8 and 800-Company. Plaintiffs are informed and believe that Defendant Kevin W. Wessel
9 at all times relevant hereto was an officer, director, shareholder, owner, controlling
10 person, and/or principal of Defendant Valencia.

11 10. Defendants DOES No. 1 through 10 are, or at all times relevant hereto, were
12 employees or agents of the named Defendants. Plaintiff is ignorant of the true names
13 and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore
14 sue these defendants by such fictitious names. Plaintiff will seek leave to amend the
15 complaint to allege the true names and capacities when ascertained. Plaintiff is informed
16 and believes that each such fictitiously named defendant is responsible in some manner
17 for the occurrences herein alleged; acted as the agents, employers, representatives, or
18 employees of the named defendants; acted within the scope of their agency, employment
19 or representative capacity; and that Plaintiff’s injuries and damages as herein alleged
20 were proximately caused by their acts.

21 11. Plaintiff is informed and believes that each named Defendant herein acted
22 as the agent, employer, representative, or employee of the other named Defendant; acted
23 within the scope of his or her agency, employment or representative capacity; and that
24 Plaintiff’s injuries and damages as herein alleged were proximately caused by their acts.

25 12. By engaging in the conduct set forth below, and by participating in a
26 scheme to profit economically from each others’ individual and collective efforts to
27 mislead Plaintiff, Defendants acted as aiders, abettors and co-conspirators of such other
28 persons, or are obligated by law to be financially responsible for such conduct. In
engaging in the conduct alleged herein, Defendants acted as the agents, employees,

1 representatives, partners or joint venturers of such other persons in the commission of the
2 acts alleged herein, and acted within the course and scope of their duties as such agents,
3 employees, representatives, partners or joint venturers. The acts of Defendants through
4 their representatives were authorized or ratified by such persons, and together constitute
5 a single and continuing course of conduct. The true scope of this conspiracy has never
6 been disclosed, and has been fraudulently concealed by Defendants' acts and practices as
7 detailed herein, tolling any applicable statutes of limitations.

8 13. Plaintiff is informed and believes that at all times relevant hereto there was
9 such a unity of interest and ownership between Defendant Companies, Inc. and
10 Defendant Wessel, its equitable owner and/or principal, such that the separate
11 personalities of Defendant Companies, Inc and Defendant Wessel do not in reality exist.
12 There would be an inequitable result if the wrongdoing alleged herein attributed to
13 Companies, Inc. and its employees and agents were treated as those of that entity alone.

14 14. Plaintiff is informed and believes that at all times relevant hereto there was
15 such a unity of interest and ownership between Defendant Alps Credit Union and
16 Defendant Wessel, its equitable owner and/or principal, such that the separate
17 personalities of Defendant Alps Credit Union and Defendant Wessel do not in reality
18 exist. There would be an inequitable result if the wrongdoing attributed to Defendant
19 Alps Credit Union and its employees and agents were treated as those of that entity
20 alone.

21 15. Plaintiff is informed and believes that at all times relevant hereto there was
22 such a unity of interest and ownership between Defendant PSI and Defendant Wessel, its
23 equitable owner and/or principal, such that the separate personalities of Defendant PSI
24 and Defendant Wessel do not in reality exist. There would be an inequitable result if the
25 wrongdoing alleged herein attributed to PSI and its employees and agents were treated as
26 those of that entity alone.

27 16. Plaintiff is informed and believes that at all times relevant hereto there was

1 such a unity of interest and ownership between Defendant 800-Company and Defendant
2 Wessel, its equitable owner and/or principal, such that the separate personalities of
3 Defendant 800-Company and Defendant Wessel do not in reality exist. There would be
4 an inequitable result if the wrongdoing alleged herein attributed to 800-Company and its
5 employees and agents were treated as those of that entity alone.

6 17. Plaintiff is informed and believes that at all times relevant hereto there was
7 such a unity of interest and ownership between Defendant Valencia and Defendant
8 Wessel, its equitable owner and/or principal, such that the separate personalities of
9 Defendant Valencia and Defendant Wessel do not in reality exist. There would be an
10 inequitable result if the wrongdoing alleged herein attributed to Valencia and its
11 employees and agents were treated as those of that entity alone.

12 **II. JURISDICTION AND VENUE**

13 18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)
14 because Plaintiff Neil A. Vacchiano is a citizen of a different State (Virginia) than the
15 Defendants Wessel (California), Lawrence (California), Gutierrez (California),
16 Companies, Inc. (Wyoming), Alps Credit Union (purportedly Sweden), Presidential
17 (Wyoming), Valencia (Nevada), and 800-Company (on information and belief, Nevada
18 or Wyoming), and the amount in controversy exceeds \$75,000 exclusive of interest and
19 costs.

20 19. This Court has personal jurisdiction over Defendants because certain
21 Defendants reside in the State of California, a substantial portion of the wrongdoing
22 alleged in this Complaint took place in the State of California, and those Defendants not
23 residing in California have sufficient minimum contacts with and/or have otherwise
24 intentionally availed themselves of the markets and/or benefits in the State of California
25 such that the exercise of personal jurisdiction would not offend traditional notions of fair
26 play and substantial justice.

27 20. Specifically, throughout the time period relevant to the allegations made

1 herein, these defendants: (a) continuously and systematically conducted business with
2 Plaintiff via the telephone and mails and (b) purposefully availed themselves of the
3 protections and benefits of the State of California by soliciting, maintaining and
4 servicing a business relationship with Plaintiff within the State.

5 21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because certain
6 Defendants reside in this District and other Defendants, as corporations subject to
7 personal jurisdiction in this District, reside in this District and a substantial portion of the
8 events and conduct giving rise to the violations complained of herein occurred in this
9 District.

10 **III. STATEMENT OF FACTS**

11 22. Plaintiff Neil A. Vacchiano is a real estate investor. By 2008, Mr.
12 Vacchiano had become interested in investing directly in international real estate.
13 Accordingly, Mr. Vacchiano sought to set up an offshore account so that his funds could
14 be quickly mobilized in the event he found a property abroad that he wished to invest in.
15 In the meantime, he believed that he could receive a better return on his money
16 conservatively invested in a bank account abroad than invested with his domestic U.S.
17 bank.

18 23. In 2008 Mr. Vacchiano searched the internet to locate information and
19 resources regarding forming offshore bank accounts. He located Companies Inc., whose
20 website indicated that it was in the business of forming entities, opening foreign bank
21 accounts for these entities, providing advice and support, and related services.

22 24. The Companies, Inc. website presents that company as reliable and expert in
23 offshore entities and offshore bank accounts. The website states that Companies Inc. is
24 “trusted since 1977” and is “the fastest and easiest way to form a corporation or LLC.”
25 The website also states: “Find out what makes an offshore company such a powerful
26 tool. Learn how to increase your financial privacy, gain asset protection and experience
27 tax benefits” The website also states: “Learn about offshore banking. This series

1 discusses the benefits of an offshore bank account, offshore banking jurisdictions, how to
2 set up your account, fees and costs as well as your account security.”

3 25. The Companies, Inc. website further states that having an overseas bank
4 account is “safe,” “popular,” “similar to your domestic account,” “readily available
5 through ATM machines and online account management,” and involves “the world’s
6 safest and strongest financial institutions.” Specifically the website states as follows:

7 **Overseas Bank Accounts**

8 An Overseas Bank Account simply means, banking with a financial
9 institution that is based in a country other than your own. Banking overseas
10 for Americans typically means a safe and popular financial haven such as,
11 Switzerland, the Cayman Islands, Belize and Luxembourg. Using a bank
account overseas is similar to your domestic account. Overseas banks are
readily available through ATM machines and online account management.
We open Overseas Bank Accounts with the world's safest and strongest
financial institutions.

12 **Advantages of Banking Overseas**

- 13 Financial Privacy
- 14 Better Interest Rates
- 15 Low Opening Deposit Requirements
- 16 Opens the door to offshore investments

17 **Overseas Banking**

18 To increase financial privacy and asset protection, open an overseas bank
19 account in the name of an offshore company. This can provide for
20 significantly enhanced financial confidentiality. There are a number of
21 ways to increase your privacy and protect your assets with overseas bank
22 accounts, companies and trusts.

23 26. The “Advantages of Banking Overseas,” quoted above, are those features
24 that Plaintiff was seeking, particularly “[o]pen[ing] the door to offshore investments”
25 and “[b]etter interest rates.”

26 27. The Companies, Inc. website also states:

27 **Fast, easy and safe offshore services.**

28 Offshore banking is one of the strongest tools you can implement to secure
your financial future. Take advantage of the toughest privacy and
protection laws available.

.....

1 - We assist you all the way through your account set up and funding.
2 Protecting your wealth and financial privacy has never been more
3 important. We offer comprehensive privacy and asset protection vehicles in
4 the safest offshore jurisdictions. We form thousands of companies and
5 trusts for our customers and helped protect millions of dollars using
6 overseas bank accounts.

7 28. The Companies, Inc. website emphasized the trustworthiness of Companies,
8 Inc., noting the "bedrock values of Honesty, Value, Service and Customer Satisfaction"
9 purportedly exhibited by Companies, Inc.:

10 **About Companies Incorporated**

11 Since 1977, Companies Incorporated and its family of companies have
12 served thousands of business people, attorneys, accountants, physicians and
13 others. Companies Incorporated is committed to the bedrock values of
14 Honesty, Value, Service and Customer Satisfaction.

15 You can trust Companies Incorporated as your long-term partner in
16 business. Companies Incorporated has a commitment to excellence in
17 providing you with the finest Corporations, Limited Liability Companies,
18 Limited Partnership and Trusts. Moreover, at Companies Incorporated we
19 care about giving our best to our treasured customers at an economical
20 price. Contact us via e-mail. Allow us to serve you. You'll be glad you did!
21 Our goals and commitments to you:

22 * 100% customer satisfaction

23 * 100% accuracy

24 * Fast service - Same day in same day out. The same day place your order,
25 your order is sent to the state for filing. The same day we receive your order
26 from the government, it is sent to you. Nobody incorporates faster.

27 * 100% customer retention - By taking good care of you, we hope to have
28 you as a customer for a lifetime.

* Experience You Can Trust

29 Mr. Vacchiano contacted Companies Inc. by telephone and initially spoke
30 with Defendant Richard Gutierrez. During the call, Gutierrez indicated to Mr.
31 Vacchiano that Companies Inc. had relationships with and worked with certain offshore
32 banks, that these banks were well-established, and that if he opened accounts with these
33 banks his funds would be safe and that he would be able to retrieve funds at any time
34 from the account. Gutierrez provided information regarding fees and sent Mr Vacchiano

1 a brochure.

2 30. Based on the representations by Mr. Gutierrez, representations in the
3 brochure, and representations on the Companies, Inc. website, in July 2008 Mr.
4 Vacchiano completed applications to open two offshore accounts and paid a fee of
5 \$2,500.00 to Companies, Inc. for its services.

6 31. Companies, Inc. advised Mr. Vacchiano to form a legal entity. Specifically,
7 Companies Inc. recommended, and Mr. Vacchiano agreed based on their apparent
8 expertise and their recommendation., to form a Belize-based entity known as a “limited
9 duration company” or “LDC.” Mr. Vacchiano had never previously heard of an LDC,
10 but he agreed because Companies, Inc. recommended it. Mr. Vacchiano named the
11 entity “Rah Charra” (named after a town in Italy that his father had spoken of years ago).

12 32. In August 2008, Mr. Vacchiano opened a bank account for Rah Charra with
13 a Belize bank recommended by Companies Inc., with a \$1,000 deposit. After opening
14 the account, he learned that the Belize bank charged an \$895.00 annual fee and also that
15 it paid a lower than expected interest rate (3%) on deposits. Mr. Vacchiano then
16 decided not make further deposits into the Belize account and instead to open an account
17 with another foreign bank.

18 33. At Gutierrez’ recommendation, Mr. Vacchiano opened an “e-savings
19 account” for Rah Charra, LDC with Defendant Alps Credit Union. Alps purportedly was
20 based in Stockholm, Sweden. Gutierrez stated that Swedish banks were safe and in fact
21 safer than Swiss banks. The account documents indicated that the account had no annual
22 fee and a provided a 5% interest rate.

23 34. Casey Lawrence of Companies, Inc. handled all the paper work for setting
24 up the Alps account, which included a lengthy application process and onerous
25 paperwork requirements.

26 35. Although Gutierrez highly recommended Alps as a Swedish entity, Sweden
27 was not among the jurisdictions that Companies, Inc. publicly recommends for offshore

1 accounts. The Companies, Inc. website states:

2 We have assembled a list of the top recommended offshore jurisdictions for
3 business formation, listed in order for highest asset protection and financial
4 privacy.

- 4 1.Nevis
- 5 2.Belize
- 6 3.British Virgin Islands (BVI)
- 7 4.Panama
- 8 5.Bahamas
- 9 6.Dominica
- 10 7.Samoa

11 36. In September 2008, Mr. Vacchiano's application was approved for the Alps
12 Credit Union and he was told that the account would be activated upon receipt of the
13 minimum deposit of \$100,000. The "e-savings account" agreement, dated November 26,
14 2008, was for a term of twelve months and provided a 5% return on funds deposited.
15 The agreement provided that if the funds were not withdrawn or transferred within seven
16 days of the "maturity date," they would be automatically renewed for the same term and
17 at the same interest rate.

18 37. Mr. Vacchiano indicated to Mr. Gutierrez that he may want to make
19 periodic withdrawals from his "e-savings account." Gutierrez told him that he could do
20 so.

21 38. On November 10, 2008, Mr. Vacchiano received his Alps Credit Union
22 account number (1350771138) and wire instructions, and he wired \$100,000 into the
23 account. This deposit was made from the proceeds of the sale of a CD at his local bank,
24 which had paid 3% interest.

25 39. After Mr. Vacchiano set up his "e-savings account," he was provided with
26 electronic access to his account whereby he could log on to the internet and see the status
27 of and activity in the account, including his balance and interest earned in his account.
28 Several days later, Mr. Vacchiano accessed his Alps account online and saw that his
deposit had been credited. Mr. Vacchiano continued look at his account online. Based
on the activity shown in the account, he reasonably believed that the funds he deposited

1 were in fact in the account and were earning interest. Mr. Vacchiano did not believe he
2 had any reason to think that the account balance and activity shown online were
3 inaccurate.

4 40. Shortly after Mr. Vacchiano made his initial deposit, Casey Lawrence
5 informed Mr. Vacchiano that the Alps policy changed shortly after he made his initial
6 deposit and that he would not be able to make monthly or periodic withdrawals.

7 41. On March 4, 2009 Mr. Vacchiano made an additional deposit of
8 \$218,873.38 into his Alps "e-savings account." This was based on all the representations
9 made by Defendants and the indication that Mr. Vacchiano's initial investment was
10 earning interest as provided under the agreement. This deposit also was from the
11 proceeds of a CD. Afterward, he continued to be able to periodically check his account
12 online and noted that interest was being posted to his account. Again, he had no reason
13 to believe anything was amiss or awry.

14 42. Plaintiff deposited a total of \$318,873.38 into the "e-savings account" and
15 maintained them for more than the required 12 month minimum holding period.

16 43. In or around May of 2010, Mr. Vacchiano noticed that the most recent
17 interest payment credited to his account online was made in February of 2010. He called
18 Companies Inc. to inquire why this was the case. Casey Lawrence told him that perhaps
19 Alps was only posting interest now every six months, or perhaps only annually.

20 44. Not being satisfied with that response, Mr. Vacchiano e-mailed Alps to
21 inquire regarding his account. After receiving no response from Alps, he called Casey
22 Lawrence again and informed her that no one was responding from Alps. She stated that
23 she would call them and let him know what was going on with his account.

24 45. In July 2010, still not having received an explanation, Mr. Vacchiano began
25 to call Alps' office in Sweden, incurring significant costs for telephone calls. He was
26 unable to reach an Alps representative. He left numerous messages with an answering
27 service, but no one returned his calls.

1 46. Mr. Vacchiano again telephoned Casey Lawrence at Companies Inc. to seek
2 assistance. She could not answer his questions and soon stopped returning his calls.

3 47. Following the end of the 12 month holding period, Mr. Vacchiano
4 requested a withdrawal of principal from the account. Specifically, in August of 2010,
5 Mr. Vacchiano telephoned Casey Lawrence and informed her that he needed to make a
6 withdrawal of \$90,000 from his Alps account. He spoke with Ms. Lawrence and Mr.
7 Gutierrez, who both indicated that he could make a withdrawal by bank wire.

8 48. Mr. Vacchiano contacted his bank in the US to arrange a bank wire. Mr.
9 Vacchiano's bank informed him that it was not able to handle bank wire from a foreign
10 entity such as Alps. Thus, he asked Ms. Lawrence if Companies Inc. would contact Alps
11 and ask it to wire \$90,000 from his Alps account to Companies Inc. and then Companies
12 Inc. could wire the funds to his US Bank. Ms. Lawrence indicated she would do so, and
13 she received Mr. Vacchiano's US bank contact information. For several weeks, Mr.
14 Vacchiano's US bank indicated that they had not heard from Companies Inc., and Mr.
15 Vacchiano's numerous follow-up calls to Ms. Lawrence went unanswered.

16 49. Mr. Vacchiano then tried another approach. In September 2010, Mr.
17 Vacchiano opened an account with Branch Banking & Trust Company ("BB&T"), a US
18 bank that had international wire capabilities. He then attempted to wire funds from the
19 Alps account to the BB&T account. Casey Lawrence of Companies, Inc. had provided
20 Mr. Vacchiano with a user name and a password for his Alps account in November 2008.
21 But when he attempted the bank wire with BB&T, he learned that he was missing a
22 "security key code" needed to effect the wire. He requested the security key code from
23 the Alps site but was only provided with an apparently generic code that consisted
24 entirely "x's." He then called Companies, Inc. and asked for his security key code. He
25 was not given a security key code by Alps or by Companies Inc., and he was unable to
26 effect the withdrawal.

27 ///

1 50. On or about September 27, 2010, Mr. Vacchiano called Casey Lawrence
2 again and, not receiving any satisfactory assistance or information, requested to speak
3 with her manager or supervisor. He was put in touch with a Matt Mitchell, who stated
4 that Companies, Inc. was referring all customers with Alps accounts to a California
5 attorney, G. Marshall Hann.

6 51. Mr. Vacchiano called Mr. Hann, who indicated that he was representing
7 Alps. Mr. Vacchiano had several telephone conversations, emails, and correspondences
8 with Mr. Hann, the essence of which was that Mr. Hann indicated that Alps was unable
9 to provide a return of Mr. Vacchiano's deposited funds, because of a downturn in the real
10 estate market. When Mr. Vacchiano initially inquired as to what real estate the
11 investments had been made in, Mr. Hann responded that it was Swedish real estate.
12 During subsequent conversations, however, Mr. Hann represented that investments had
13 been made in US real estate.

14 52. Mr. Vacchiano's online account with Alps showed the following interest
15 payments to his account: \$1,244.88 through February 18, 2009; \$3,493.50 through May
16 19 2009; \$4,073.44 through August 19 2009; \$4,154.18 through November 20 2009; and,
17 finally, \$2,214.81 through February 26, 2010. It appears from the website records that
18 Alps was crediting – or purporting to credit – interest payments quarterly.

19 53. The most recent balance in Mr. Vacchiano's Alps account ascertainable
20 through the Alps website, as of March 2, 2010, showed a balance of \$333,944.19,
21 apparently reflecting the two deposits, plus the above-referenced interest payments,
22 minus wire transfer fees.

23 54. To date Mr. Vacchiano has not received any of his principal or any interest
24 payments.

25 55. Plaintiff is informed and believes that Defendant Companies, Inc., at all
26 times relevant hereto, and in all respects described herein, was working at the behest of
27 and direction of Defendant Wessel.

1 secreting assets.

2 66. On Companies Inc.'s website, Defendant Wessel has promoted a book that
3 he claims to have written entitled "Build Your Financial Castle (Legal tools you can use
4 now to protect yourself from . . . lawsuits, creditors, taxes, probate . . . and other
5 financial tragedies that can wipe you out overnight)." The book appears to be primarily
6 a marketing tool for Companies, Inc. The prefatory pages indicate that the book was
7 published through Companies Inc. The "footer" of each page contains the following
8 information: "*Companies Incorporated*—Tel: 800-830-1055 / 661-253-3303 Web:
9 www.companiesinc.com".

10 67. The title page refers to Wessel as a nationally known asset protection and
11 estate planning expert. The "About the Author" page of that book states as follows:

12 Kevin Wessel is well renowned as one of America's leading experts and
13 consultants on asset protection and estate planning. Mr. Wessel is the
14 President and CEO of Companies Incorporated, an international firm
15 specializing in asset protection and estate planning for individuals and
16 companies. Mr. Wessel's firm establishes legal entities used to protect
17 assets from lawsuits, creditors, income taxes, estate taxes, and probate.

18 Due to his work and innovative asset protection strategies, Mr. Wessel is in
19 constant demand speaking to audiences around the nation in his mission
20 to help others to protect their financial resources.

21 68. Apparently due to Wessel's being "in constant demand speaking to
22 audiences around the nation in his mission to help others to protect their financial
23 resources," Wessel neglected to take steps to protect *Plaintiff's* financial resources. In
24 fact, Wessel created, aided and abetted a fraudulent scheme, along with the other
25 Defendants herein, to enable himself to benefit personally and through his businesses
26 from Plaintiff's financial resources, at Plaintiff's expense.

27 69. Wessel has been sued personally, along with Companies, Inc., in at least
28 two other lawsuits in U.S. federal courts misconduct virtually identical to that suffered
by Plaintiff here: *Alexander v. Incway Corporation*, Case No. 2-11-CV-08851-DSF
(VBKx), pending before this Court; and *Topiwala v. Wessel, et al.*, Case No. 1:11-cv-

1 00543-WDQ, pending in U.S. District Court in Maryland.

2 70. Companies, Inc. and PSI are two of numerous related companies owned and
3 managed by Defendant Wessel. Another one of these companies is
4 OffshoreCorporation.com, which Wessel has characterized essentially as a front
5 company for Companies, Inc.

6 71. A website for a company called OffshoreCorporation.com states that
7 OffshoreCorporation.com is "a division of Companies, Incorporated" and that its address
8 is the same Valencia, California address as that of Companies, Inc. The website for
9 OffshoreCorporation.com contains the following message from Defendant Wessel,
10 stating in relevant part (emphases added):

11 A Message From the CEO

12 *Companies Incorporated, the company behind OffshoreCorporation.com,*
13 *is the largest company worldwide that establishes corporations and bank*
14 *accounts around the globe.* Like many industry leaders, we had our
humble beginnings. This is our story.

15 * * *

16 . . . I developed a great passion for lawsuit protection to shield others from
17 the ravages of litigation. I wrote my first book, "Build Your Financial
18 Castle." We now give away a free e-book version of this book to our clients
with each order. I also started teaching seminars in the US and
internationally on asset protection and investing in real estate.

19 I took over my father's company, which by this time, was an empty
20 corporate shell, and changed the name to "Companies Incorporated." I and
21 the wonderful employees at Companies Incorporated share the same values
I had as a kid: faith, honesty, hard work and consideration for others. We
22 have built the company into the world leader in establishing corporations
and bank accounts in the US and around the globe to fulfill our big
objective: to protect and grow the finances of our clients.

23 * * *

24 Kevin Wessel, CEO
Companies Incorporated

25 72. The public records of the California Secretary of State lists the address of
26 Defendant Valencia as 28015 Smyth Drive, Valencia, CA 91355 – the same address as
27

1 Companies, Inc. and PSI -- and lists its designated agent for service of process as
2 Defendant Wessel.

3 73. The public records of the California Secretary of State further indicates that
4 as of 2009, Valencia was not qualified to do business in California, although Plaintiff is
5 informed and believes that it is in fact doing business in California.

6 74. Plaintiffs are informed and believe that Wessel uses Companies, Inc., Alps,
7 PSI, OffshoreCorporation.com, 800-Company, and Valencia, and other corporations and
8 entities, as part of a common plan and scheme designed in part, misleading, false and
9 improper conducts and representations, to obtain funds from uninformed and
10 unsuspecting members of the public such as Plaintiff, to conduct other unfair, fraudulent
11 or unlawful business, and to divert or secret funds.

12 75. Plaintiffs are informed and believe that Companies, Inc., Alps, PSI,
13 OffshoreCorporation.com, 800-Company, and Valencia, and other corporations and
14 entities as part of a common plan and scheme designed in part, misleading, false and
15 improper conducts and representations, to obtain funds from uninformed and
16 unsuspecting members of the public such as Plaintiff.

17 76. The corporate Defendants Companies, Inc., PSI, 800-Company, and
18 Valencia have utilized a common office address at 28015 Smyth Drive, Valencia, CA
19 91355, as well as utilize common employees, agents, and contractors, including but not
20 limited to Paul Hess.

21 77. Through their internet websites, these corporate Defendants each have
22 falsely portrayed a "brick and mortar" business image and address to the world. In
23 reality, these Defendants operate their business virtually entirely through the internet, the
24 phones, and email in order to entice unsuspecting clients like Plaintiff and perpetrate
25 their improper conduct. At the actual brick and mortar address, these defendants hide
26 behind a virtual "fortress" created as part of the locked doors and intercom buzzers
27 associated with Valencia, which operates a pawn shop at that address. Nonetheless, the

1 image of a legitimate, physical office – which is largely illusory – is critical to these
2 Defendants images and business successes.

3 78. In addition, Plaintiffs are informed and believe that:

4 a) There is a unity of interest and ownership between and among
5 Companies, Inc., Alps, PSI, OffshoreCorporation.com, 800-Company, and
6 Valencia, and other related corporations and entities, on the one hand, and their
7 equitable owner Wessel, on the other hand, such that the separate personalities of
8 the corporations and entities and Wessel do not in reality exist;

9 b) An inequitable result would occur if the corporate Defendants’ acts in
10 question are treated as those of the corporate Defendants alone;

11 c) Funds have been commingled between and among the corporate
12 entities and Wessel;

13 d) The corporate Defendants have held out that they are liable for the
14 debts of each other and of Wessel, and vice versa;

15 e) There is common and/or identical ownership between and among the
16 corporate Defendants and Wessel;

17 f) These corporate Defendants and Wessel share and use the same
18 offices and employees;

19 g) These corporate Defendants shares identical or virtually identical
20 ownership, officers, directors, and managers;

21 h) These corporate Defendants and Wessel use each other as mere
22 shells or conduits for the affairs of each other.

23 79. In short, individual Defendant Wessel has used his various corporate and
24 other entities as “mere shells” in an attempt to evade and avoid personal liability.

25 **IV. RECAP AND SUMMARY OF DEFENDANTS’ WRONGDOING**

26 80. In their dealings with Mr. Vacchiano, Defendants made a number of
27 material misrepresentations of fact and omissions of material fact, including the
28 following:

- 1 a. They represented that depositing Mr. Vacchiano’s funds into an
- 2 account with Alps was a sound, safe use of his funds, when in fact it was not; that
- 3 Alps was similar to or the same as a bank, when it was not; and that Swedish credit
- 4 unions are different than and materially less safe than banks and are minimally
- 5 regulated or not regulated at all;
- 6 b. They represented that Swedish credit unions were as safe as or
- 7 safer than Swiss banks, when in fact that is not true or accurate;
- 8 c. That Alps had no independent oversight as to the use of the funds
- 9 of depositors, including Plaintiff;
- 10 d. They represented that the account balances and interest payments
- 11 reflected in the websites were accurate, when on information and belief this information
- 12 was false and incorrect;
- 13 e. They failed to disclose that Companies Inc. had an ownership in, or
- 14 other close business interest or relationship with, Alps, and specifically that Kevin
- 15 Wessel, who is the principal and/or owner of Companies Inc., on information and belief,
- 16 has an ownership interest or other financial interest in Alps and was a former executive
- 17 of Alps;
- 18 f. They failed to disclose that Kevin Wessel also was the principal
- 19 and /or owner of some 130 other companies with the same California address of
- 20 record as Companies Inc., which Plaintiffs are informed and believe are shell
- 21 companies;
- 22 g. They failed to disclose that Alps’ ability to return Mr. Vacchiano’s
- 23 funds in his “e-savings account” were related to the performance of the real estate
- 24 market, were tied to real estate investments, or were invested in or loaned for real
- 25 estate investments;

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1 h. They represented that the Alps Credit Union had offices at the
 2 World Trade Center, Klarabergsviadukten 70, Stockholm, Sweden, which apparently
 3 is a corporate office complex in Stockholm, and presents itself as having its offices in
 4 a modern high-end office building, when in fact it did not have offices at that
 5 location, and on information and belief had no physical offices in Sweden but rather
 6 its actual address was a mail drop post office box, and since this aspect of the Alps
 7 hoax and fraud was originally pointed out in this and other lawsuits, the website of
 8 the Alps has added the following statement in its "Contact Us" section: "The Alps
 9 Credit Union has been fine-tuned to operate at maximum efficiency and minimal
 10 operational overhead. Our contracted office and staff within the World Trade Center
 11 in Stockholm, Sweden facilitate member telephone and document reception to
 12 minimize outgo and maximize return making The Alps Credit Union one of the
 leanest operations in its field";

13 i. They failed to disclose that, on information and belief: the Alps
 14 Credit Union has never had any employees, has never conducted any business, and
 15 does not have an actual physical address in Sweden, and that Defendant Wessel has
 16 been an officer or principal of Alps Credit Union;

17 j. They misrepresented and omitted material facts regarding Swedish
 18 credit unions, including:

19 1) There are no government regulations protecting investors in
 20 Swedish credit unions, unlike as in the United States;

21 2) There are no mandatory minimum balances required by the
 22 government to be maintained in a Swedish credit union in order to protect depositors;

23 3) The maximum number of depositors in a Swedish credit union
 24 is 1,000, thereby limiting the total available assets of the credit union.

25 k. They misrepresented, *inter alia*, material facts contained on
 26 Companies, Inc.'s website, including but not limited to the following:

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- That Companies Inc. is “trusted since 1977” and is “the fastest and easiest way to form a corporation or LLC.”
- That having an overseas bank account is “safe,” “popular,” “similar to your domestic account,” “readily available” through ATM machines and online account management,” and involves “the world’s safest and strongest financial institutions.”
- “Banking overseas for Americans typically means a safe and popular financial haven such as, Switzerland, the Cayman Islands, Belize and Luxembourg. Using a bank account overseas is similar to your domestic account. Overseas banks are readily available through ATM machines and online account management.”
- “We open Overseas Bank Accounts with the world's safest and strongest financial institutions.”
- **“Advantages of Banking Overseas [include] . . . Better Interest Rates . . . [and] Opens the door to offshore investments”**
- “To increase financial privacy and asset protection, open an overseas bank account in the name of an offshore company. This can provide for significantly enhanced financial confidentiality.” -
- “Offshore banking is one of the strongest tools you can implement to secure your financial future. Take advantage of the toughest privacy and protection laws available.”
- “We assist you all the way through your account set up and funding. Protecting your wealth and financial privacy has never been more important. We offer comprehensive privacy and asset protection vehicles in the safest offshore jurisdictions.”
- “Companies Incorporated is committed to the bedrock values of Honesty, Value, Service and Customer Satisfaction. You can trust Companies Incorporated as your long-term partner in business. Companies Incorporated has a commitment to excellence in providing you with the finest Corporations, Limited Liability Companies, Limited Partnership and Trusts. Moreover, at Companies Incorporated we care about giving our best to our treasured customers at an economical price.”
- “Our goals and commitments to you: 100% customer satisfaction [;] 100% accuracy [;] . . . 100% customer retention.”
- “Experience You Can Trust”

81. In their dealings with Mr. Vacchiano, Defendants committed the following wrongdoing, inter alia, against Plaintiff:

- 1 a. Recommending an offshore entity for among other things asset
2 protection;
- 3 b. Recommending that Mr. Vacchiano form a limited duration
4 corporation;
- 5 c. Recommending that Mr. Vacchiano open an offshore bank
6 account;
- 7 d. Representing that an offshore bank account was “safe,” “similar to
8 your domestic account,” “readily available through ATM machines and online
9 account management,” and involves “the world’s safest and strongest financial
10 institutions,” and that “[w]e form thousands of companies and trusts for our
11 customers and helped protect millions of dollars using overseas bank accounts”;
- 12 e. Recommending that Mr. Vacchiano open an account at a Belize
13 bank that charged unreasonably high fees and paid unreasonably low interest rates;
- 14 f. Representing that “[y]ou can trust Companies Incorporated as
15 your long-term partner in business. Companies Incorporated has a commitment to
16 excellence . . . [and] at Companies Incorporated we care about giving our best to our
17 treasured customers at an economical price”;
- 18 g. Representing that “[o]ur goals and commitments to you [include]:
19 * 100% customer satisfaction * 100% accuracy * 100% customer retention
20 * Experience You Can Trust”;
- 21 h. Recommending that Mr. Vacchiano open an “e-savings account”
22 with Defendant Alps Credit Union purportedly based in Stockholm, Sweden, and
23 representing that Swedish banks were safe
- 24 i. Representing that the “e-savings account” at Alps would provide a
25 5% return and further that Mr. Vacchiano could take periodic withdrawals from his
26 “e-savings account”;
- 27 j. Representing to Mr. Vacchiano that the funds he deposited by
28 bank wire into his purported “e-savings account” were in fact in the account and were
earning interest;

1 k. After Mr. Vacchiano had opened and funded his “e-savings
2 account” at Alps, informing him that Alps’ policy had changed and that Mr.
3 Vacchiano could no longer take periodic withdrawals from his “e-savings account”;

4 l. Representing to Mr. Vacchiano in May 2010, after he noticed that
5 interest had not posted to his account since February 2010, that Alps may have
6 changed its policy and begun to post interest only every six months or annually,
7 rather than monthly;

8 m. Failing to communicate with Mr. Vacchiano after he expressed
9 concern over the status of his funds with Alps, and ultimately failing to return his
10 phone calls;

11 n. Representing that they would assist Mr. Vacchiano with a wire
12 withdrawal from his Alps account by having the funds wired first to Companies, Inc.
13 and then to Mr. Vacchiano, and then failing to assist with such a withdrawal and
14 ultimately failing to return his phone calls or otherwise communicate with him;

15 o. After Mr. Vacchiano opened an account a US bank that had direct
16 international wire capabilities, into which he planned to wire the withdrawal from the
17 Alps account, refusing to provide Mr. Vacchiano with a required security code
18 necessary to effect the wire;

19 p. Failing to disclose prior to or during Mr. Vacchiano’s investment
20 that Alps was investing Mr. Vacchiano’s funds in real estate investments, or in the
21 alternative falsely representing to Mr. Vacchiano after the fact that Alps had lost Mr.
22 Vacchiano’s funds through investing in the Swedish real estate market and/or
23 American real estate market.

24 **V. LEGAL CLAIMS**

25 **FIRST CAUSE OF ACTION**

26 **(For Breach of Companies, Inc. Contract)**

27 **(Against Defendants Companies, Inc., Wessel, Alps Credit Union, and PSD)**

28 82. The preceding and superceding paragraphs are incorporated herein by this
reference.

1 83. Plaintiff entered into an agreement with Companies, Inc. under which
2 Plaintiff would pay for advice, recommendations, and services with respect to
3 establishing a potential offshore entity for Plaintiff.

4 84. Plaintiff duly performed all of the conditions of the agreement to be
5 performed by him and/or stood ready to perform all such conditions as required by the
6 agreement.

7 85. Through their actions described *supra*, Defendants failed to perform under
8 the terms of the agreement with Plaintiff and breached the agreement with Plaintiff.

9 86. Defendants *inter alia* provided false and misleading statements to Plaintiffs,
10 omitted to state material facts, and provided negligent advice with respect to the type of
11 entity to form, the jurisdiction of entity to form, and the entity to invest with.

12 87. As a result of Defendants' actions, Plaintiff has suffered damages in an
13 amount to be proved at trial.

14 **SECOND CAUSE OF ACTION**
15 **(For Breach of Alps Credit Union Contract)**
16 **(Against Defendants Companies, Inc., Wessel, Alps Credit Union, and PSI)**

17 88. The preceding and superceding paragraphs are incorporated herein by this
18 reference.

19 89. Plaintiff entered into an "e-savings account" agreement with Defendants in
20 which Plaintiff invested his money in the account in exchange for the return of Plaintiff's
21 principal plus 5% annual interest, and out of which Plaintiff could take withdrawals.

22 90. Plaintiff duly performed all of the conditions of the agreement to be
23 performed by him and/or stood ready to perform all such conditions as required by the
24 agreement.

25 91. Through their actions described *supra*, Defendants failed to perform under
26 the terms of the agreement with Plaintiffs and breached the agreement with Plaintiff.
27 They failed to pay him the promised interest, they failed to allow him to make the
28 promised withdrawals, and they failed to return his principal.

1 92. As a result of Defendants' actions, Plaintiff has suffered damages in an
2 amount to be proved at trial.

3 **THIRD CAUSE OF ACTION**

4 **(Negligence)**

5 **(Against All Defendants)**

6 93. The preceding and superceding paragraphs are incorporated herein by this
7 reference.

8 94. Defendants owed a duty of reasonable care to Plaintiff in making
9 recommendations and providing services to Plaintiff.

10 95. By virtue of the acts complained of, Defendants breached their duty of
11 reasonable care to Plaintiff.

12 96. As a result of Defendants' actions, Plaintiff has suffered damages in an
13 amount to be proved at trial.

14 **FOURTH CAUSE OF ACTION**

15 **(Fraudulent Inducement, Fraud & Deceit)**

16 **(Against All Defendants)**

17 97. The preceding and superceding paragraphs are incorporated herein by this
18 reference.

19 98. Defendants made material misrepresentations and omissions to Plaintiff in
20 the course of selling and providing services and inducing Plaintiff's investments with
21 Defendants.

22 99. Defendants knew that these representations and omissions to Plaintiff were
23 false and misleading when made.

24 100. Defendants made these false representations and omissions with the express
25 purpose of inducing Plaintiff to enter into the relevant agreements and to continue to pay
26 for services and inducing Plaintiff to deposit funds into the accounts.

27 101. Plaintiff reasonably relied on Defendants' false representations and
28 omissions to enter into agreements with Defendants, pay for services, and make and
maintain their investments with Defendants.

1 102. As a result of the false representations of Defendants, Plaintiff was injured
2 in an amount to be proved at trial.

3 103. These affirmative misrepresentations set forth above defrauded Plaintiff in
4 violation of California Civil Code §§1572, 1709 and 1710 and common law, for which
5 Plaintiff is entitled to recover compensatory damages, including consequential damages.

6 104. Defendants' conduct described herein was done with conscious disregard of
7 Plaintiff's rights and with the intent to vex, injure or annoy Plaintiff such as to constitute
8 oppression, fraud or malice under California Civil Code §3294, entitling Plaintiff to a
9 separate and distinct award of punitive damages in an amount appropriate to punish or
10 make an example of Defendants, bearing a reasonable relationship to the compensatory
11 damages.

12 **FIFTH CAUSE OF ACTION**

13 **(Negligent Misrepresentation)**

14 **(Against All Defendants)**

15 105. The preceding and superceding paragraphs are incorporated herein by this
16 reference.

17 106. Defendants made material misrepresentations and omissions to Plaintiff
18 regarding the facts described *supra*.

19 107. Defendants failed to exercise reasonable care with respect to their
20 representations and omissions, which constituted negligence, and such negligence was a
21 cause of injury to Plaintiff.

22 108. A reasonably prudent person under circumstances similar to Defendants
23 would exercise extreme caution in making such representations and omissions, as such
24 facts and circumstances were in the exclusive control of Defendants.

25 109. A person of ordinary prudence in the same situation and possessing the
26 same knowledge as Defendants would have foreseen or anticipated that Plaintiff would
27 be injured by or as a result of the actions or inactions and that such actions or inactions
28 could reasonably have been avoided.

1 110. Plaintiff was unaware of the falsity of Defendants' representations or
2 omissions of said material facts and reasonably relied upon those representations.

3 111. As a result of Defendants' actions, Plaintiffs has suffered damages in an
4 amount to be proved at trial.

5 **SIXTH CAUSE OF ACTION**

6 **(Unlawful, Unfair and Fraudulent Business Acts and Practices;
7 Business and Professions Code §17200, et seq.)**

8 **(Against All Defendants)**

9 112. The preceding and superceding paragraphs are incorporated herein by this
10 reference.

11 113. This cause of action is brought pursuant to Cal. Business and Professions
12 Code §17200, et seq. as a result of Defendants' violation of the California Corporations
13 Code § 25400 and 25401. Plaintiff reserves the right to identify additional violations of
14 laws as circumstances and further investigations warrant.

15 114. Defendants' acts and practices, as described above, constitute unlawful
16 business acts and practices.

17 115. As a result of the unlawful business acts practices described above, Plaintiff,
18 pursuant to Cal. Business and Professions Code §17203, is entitled to an order enjoining
19 such future conduct on the part of Defendants and such other orders and judgments as
20 may be necessary.

21 116. Defendants' acts and practices, as described above, also constitute unfair
22 business acts and practices.

23 117. There is no benefit to consumers, shareholders, or competition by
24 Defendants' unfair, unlawful, and fraudulent practices. Indeed, the harm to consumers,
25 investors, and competition is substantial.

26 118. The gravity of the consequences of Defendants' conduct as described above
27 outweighs any justification, motive or reason therefore, particularly considering the
28 available legal alternatives that exist in the marketplace, and is immoral, unethical,
unscrupulous, offends established public policy or is substantially injurious to Plaintiffs.

1 119. Plaintiff suffered injury in fact because he was deprived of money and/or
2 property as a result of Defendants' misconduct.

3 120. As a result of the unfair business acts practices described above, Plaintiff,
4 pursuant to Business and Professions Code §17203, is entitled to an order enjoining such
5 future conduct on the part of Defendants and such other orders and judgments as may be
6 necessary.

7 121. Defendants' acts and practices, as described above, also constitute
8 fraudulent business practices under Cal. Business and Professions Code §17200, et seq.

9 122. As a result of the business acts and practices described above, Plaintiff,
10 pursuant to Cal. Business and Professions Code §17203, is entitled to an order enjoining
11 such future conduct on the part of Defendants and such other orders and judgments as
12 may be necessary.

13 **SEVENTH CAUSE OF ACTION**

14 **(Conversion)**

15 **(Against Defendants Wessel, Companies, Inc., Alps Credit Union, and PSI)**

16 123. The preceding and superceding paragraphs are incorporated herein by this
17 reference.

18 124. Defendants Wessel, Companies, Inc., and Alps Credit Union improperly
19 accepted and received \$333,944.19 from Plaintiff and distributed the funds to themselves
20 for their own benefit or use, and/or distributed the funds to others, and intentionally took
21 possession and converted monies belonging to Plaintiff to their own use.

22 125. As a result of said conversion, and as a proximate result thereof, Plaintiff
23 has been damaged in an amount subject to proof at time of trial.

24 126. The aforementioned acts of Defendants Wessel, Companies, Inc., and Alps
25 Credit Union were willful, wanton, malicious and oppressive and were undertaken with
26 the intent to defraud as those terms are defined in Civil Code §3294.

27 127. Defendants Wessel, Companies, Inc., and Alps Credit Union conduct was
28 done with the intent to deprive Plaintiff of property or legal rights or otherwise cause
injury, and was despicable conduct that subject Plaintiff to a cruel and unjust hardship

1 and a disregard of Plaintiff's rights, entitling Plaintiff to an award of punitive damages
2 against Defendants Wessel, Companies, Inc., and Alps Credit Union.

3 **EIGHTH CAUSE OF ACTION**

4 **Unjust Enrichment-Restitution**

5 **(Against Defendants Wessel, Companies, Inc., Alps Credit Union, and**
6 **PSI)**

7 128. The preceding and superceding paragraphs are incorporated herein by this
8 reference.

9 129. Defendants Wessel, Companies, Inc., and Alps Credit Union obtained and
10 retained funds from Plaintiff.

11 130. Defendants Wessel, Companies, Inc., and Alps Credit Union were aware of
12 the benefit of Plaintiff's funds and knowingly and voluntarily accepted and retained the
13 benefit of Plaintiff' funds.

14 131. Neither Defendants Wessel, nor Companies, Inc., nor Alps Credit Union
15 provided any goods or services in exchange for the funds received from Plaintiff.

16 132. The circumstances are such that it is inequitable for Defendants Wessel,
17 Companies, Inc., or Alps Credit Union to retain the benefit of Plaintiff's funds.

18 **NINTH CAUSE OF ACTION**

19 **Common Counts, Assumpsit, Unjust Enrichment and/or Restitution**

20 **(Against Defendants Wessel, Companies, Inc., Alps Credit Union, and PSI)**

21 133. The preceding and superceding paragraphs are incorporated herein by this
22 reference.

23 134. Defendants by their conduct entered into a series of contracts with
24 Plaintiff that resulted in money being had and received by Defendants at the expense
25 of Plaintiff, either expressly or under agreements in *assumpsit*. In addition, by law
26 each of these agreements have within them an implied covenant of good faith and fair
27 dealing. Defendants engaged in conscious and deliberate conduct, as set forth above,
28 that has disappointed or frustrated Plaintiff's reasonable expectations that are implied

1 in such agreements. Defendants have been unjustly enriched by the resulting profits
2 enjoyed by Defendants as a result of such agreements. Plaintiff's detriment and
3 Defendants' enrichment were related to and flowed from the conduct challenged in
4 this Complaint.

5 135. Defendants by their conduct entered into a series of contracts with
6 Plaintiff that resulted in money being had and received by Defendants at the expense
7 of Plaintiff, either expressly or under agreements in *assumpsit*. In addition, by law
8 each of these agreements have within them an implied covenant of good faith and fair
9 dealing. Defendants engaged in conscious and deliberate conduct, as set forth above,
10 that has disappointed or frustrated Plaintiff's reasonable expectations that are implied
11 in such agreements. Defendants have been unjustly enriched by the resulting profits
12 enjoyed by Defendants as a result of such agreements. Plaintiff's detriment and
13 Defendants' enrichment were related to and flowed from the conduct challenged in
14 this Complaint.

15 136. Under common law principles recognized in claims of common counts,
16 restitution and/or *assumpsit*, Defendants should not be permitted to retain the benefits
17 conferred upon them from Plaintiff and converting it into revenues and profits.

18 137. Under principles of equity and good conscience, Defendants should not
19 be permitted to retain the benefits they have acquired through the unlawful conduct
20 described above, and as between the two, Plaintiff have a superior right to some or all
21 of such monies over Defendants.

22 138. Plaintiff seeks damages and restitutionary disgorgement of all profits or
23 monies generated from such illegal acts, and the establishment of an asset freeze and
24 a constructive trust from which Plaintiff may seek restitution as to all such funds,
25 revenues and benefits that Defendants have unjustly received as a result of their
26 actions that rightfully belong to Plaintiff.

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TENTH CAUSE OF ACTION

Money Had and Received

**(Against Defendants Wessel, Companies, Inc., Alps Credit Union, and
PSI)**

139. The preceding and superceding paragraphs are incorporated herein by this reference.

140. As the result of Defendants' agreements, misrepresentations, and omissions of material fact as discussed above, Plaintiff paid money and conferred a benefit on Defendants that was originally in Plaintiff's possession, as a result of either fraud, payment under compulsion, or mistake.

141. Defendants received and retained this benefit under such circumstances that it would be inequitable or unconscionable to permit Defendants to retain this benefit without returning its reasonable value to Plaintiff. In fairness, all such monies, including all interest Defendants have earned on such monies while in wrongful possession thereof, should be paid to Plaintiff.

142. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff suffered injury and therefore seeks an order directing Defendants to return the amount Plaintiff paid to Defendants, plus interest thereon, as well as impose a constructive trust on such monies.

V. PRAYER FOR RELIEF

Plaintiff requests the following relief against Defendants:

1. Compensatory damages sufficient to fully compensate Plaintiff for his losses of at least \$333,944.19, plus interest, or such other amount to be proved at trial, and/or damages in addition to or in the alternative, such as well-managed portfolio or model portfolio damages, rescissionary damages, or other measures of damages, as well as recovery of or refund of all fees charged to them, including set up fees;

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2. That a constructive trust, equitable lien, writ of attachment, and/or other similar relief in favor of Plaintiff be imposed upon the funds transferred to Defendants;

3. An order enjoining future misconduct on the part of Defendants and such other orders and judgments as may be necessary;

4. Recovery of prejudgment interest at the statutory rate, running from the date(s) of the transactions herein until the date of a court judgment or arbitration award;

5. An award of exemplary or punitive damages against Defendants in an amount to be established at trial, sufficient to punish Defendants for their oppressive, wanton, and malicious conduct and to deter others from engaging in such conduct;

6. Costs of suit, including reasonable attorneys' fees, in an amount subject to proof; and

7. Such other relief as may be appropriate under the circumstances.

DATE: August 31, 2012

MAURIELLO LAW FIRM, APC



Thomas D. Mauriello

Attorneys for Plaintiff

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: August 31, 2012

MAURIELLO LAW FIRM, APC



Thomas D. Mauriello

Attorneys for Plaintiff