BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Desist and Refrain Order Issued Against: TRINITY INVESTMENT GROUP, TRINITY INVESTMENTS GOLDBERT CONSTENOBLE BARO, a.k.a. CECILIO BARO, a.k.a. CECIL BARO, a.k.a. BERT BARO Respondents.	OAH No. N2004050227 DECISION

The attached Proposed Decision of the Administrative Law Judge is adopted by the Department of Corporations as its decision in the above-entitled matter, subject only to the following changes.

1. The final paragraph of Subsection 2 of the ORDER shall be deleted and replaced with the following: "Interest shall be payable by the Respondent Baro at the statutory rate of ten per cent per annum from the effective date of this Decision."

2. Minor and technical changes shall be made per the accompanying Errata Sheet.

This decision shall become effective on 8/25/05.

Dated: 8/24/05

WAYNE STRUMPFER
Acting California Corporatins Commissioner
Department of Corporations

State of California - Department of Corporations

ERRATA SHEET

(Proposed Decision)

Page 7, ¶ xii: "access" should be "excess"

Page 9, ¶ xxviii: insert "their" after "refinance."

Page 10, 5th line: "Mr. Post" should be "Mr. Post's home"

Page 10, 4th full paragraph: "centers" should be "center"

Page 16, 3rd full paragraph: "supposed" should be "supposedly"

Page 16, 8th full paragraph: "his family and him money" should be "his and his family's money"

Page 17, 3rd paragraph: "expity" should be "expiration"

Page 17, 9th paragraph: "her husband and her" should be "the Moras"

Page 18, 2nd full paragraph: "Bora" should be "Baro"

Page 18, 8th full paragraph, 5th line: "that" should be "about"

Page 19, 4th paragraph: "personal new account information form" should be "Personal New Account Information Form"

Page 19. 8th paragraph: "Mrs. Tolmosoff and husband" should be "Mrs. Tolmosoff and her husband"

Page 28, 4th paragraph: "who Mr. Henderson has a keen desire to attend college" should be "who Mr. Henderson desired to attend college"

Page 37, at Witness Per Diem Fees and Travel Expenses, the amount "$919.00" should be "$991"

Page 45, 5th paragraph, 3rd line: "included that claims" should be "included claims"

-END-

State of California - Department of Corporations

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In the Matter of the Desist & Refrain Order Issued Against: TRINITY INVESTMENT GROUP, TRINITY INVESTMENTS, GOLDBERT CONSTENOBLE BARO, a.k.a CECILIO BARO, a.k.a. CECIL BARO, a.k.a BERT BARO, Respondents.	OAH No. N2004050227

PROPOSED DECISION

On June 21, June 22, July 9, and July 22, 2004, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California ("OAH"), heard this matter.

Joan E. Kerst, Senior Corporations Counsel, represented Complainant.

Respondent Goldbert Constenoble Baro, also known as Cecilio Baro, Cecil Baro and Bert Baro ("Respondent Baro"), appeared at all phases of the hearing, but he was not otherwise represented.

The record remained open for the purpose of providing the parties the opportunity to file written closing arguments. On August 13, 2004, Complainant filed, via telefacsimile transmission, with OAH a document titled "Closing Brief and Declaration of Joan E. Kerst In Support of Request for Ancillary Relief and Costs," which was marked as exhibit "43" and received as argument. On September 7, 2004, Respondent Baro filed, via telefacsimile transmission, with OAH a brief entitled "Respondents [sic] Closing Briefs and Request for Relief to Vacate Desist and Refrain," which was marked as exhibit "XX," and received as argument. On September 15, 2004, OAH received, via telefacsimile transmission, Complainant's counsel's letter, which was marked as exhibit "44." On September 16, OAH received Complainant's "Reply Brief" which was marked as exhibit "45," and received as argument.

On September 16, 2004[1], the parties were deemed to have submitted the matter and the record closed.

[1] On September 21, 2004, OAH received a letter, dated September 20, 2004, by Respondent Baro. The letter was marked as exhibit "YY," but the contents of the letter was not considered.

FACTUAL FINDINGS

Parties & Jurisdiction

1. The California Department of Corporations ("Department") is the state agency that is charged with administering and enforcing the Corporate Securities Law of 1968 (California Corporations Code, title 4, division 1, section 25000 et seq.)

2. Pursuant to California Corporations Code section 25532, on May 1, 2003, Supervising Corporations Counsel Alan S. Weinger ("Complainant"), on behalf of Demetrios A. Boutris, California Corporations Commissioner, issued a Desist and Refrain Order ("D&R Order") against Respondent Goldbert Constenoble Baro, also known as Cecilio Baro, Cecil Baro and Bert Baro, 236 Pollasky Avenue, Apartment C, Clovis, California 93612 ("Respondent Baro"), and Trinity Investment Group, also known as Trinity Investments, Trinity Group, T.I.G., and Trinity, 5588 W. Palm Avenue, Fresno, California 93704 ("Trinity").

The D&R Order, dated May 1, 2003, alleged, among other things, that Respondent Baro, doing business as Trinity Investment Group and Trinity Investments, offered and sold investment contracts to consumers in the general public. The investment contracts as securities were not qualified under the California Corporate Securities law before being offered and sold by Respondent Baro. Further, the D&R Order alleged that the securities of Trinity were offered and sold by Respondent Baro by means of written or oral communications that included untrue material facts or omissions of material fact.

The D&R Order commanded Respondent Baro to desist and refrain from the further offer or sale in the State of California of securities in the form of investment contracts, unless and until qualification of such securities had been made under the Corporate Securities Law. Further, the D&R Order commanded Respondent Baro to desist and refrain from attempting to offer, sell or buy any security in the State of California by means of any written or oral communication that included any untrue statement of a material fact or that omitted to state a material fact in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

3. On May 6, 2004, Respondent submitted a written request for a hearing to challenge the D&R Order, which had been served on him the preceding year on May 9, 2003.

4. On May 12, 2004, Joan E. Kerst, Senior Corporations Counsel, on behalf of William P. Wood, California Corporations Commissioner, issued Commissioner's Statement in Support of Desist and Refrain Order and Request for Ancillary Relief and Costs.

5. The hearing was originally set to commence on May 27, 2004; but on good cause shown, the commencement of the proceeding was continued until June 21, 2004.

Respondent Baro's Background, Experience and Work History.

6. Respondent Baro is 46 years old as his date of birth is November 22, 1957.

Respondent Baro is married to Teresa Baro. He and his wife live in Clovis, Fresno County, California. Respondent Baro has four sons, who have ages of 25 years, 22 years, 10 years and 8 years.

Respondent Baro's parents live in Fresno County. He has brothers who also live in the area.

Respondent Baro claimed he attended San Jose State University in the mid-1970s, but he did not earn a college degree.

In the 1980s, Respondent Baro began working for various bank corporations. He started as a bank teller with Far West Saving and Loan. After about two years in the employment of that banking concern, Respondent Baro began work for Imperial Savings and Loan and then he worked for Great Western Bank. He worked for the three banking organizations, respectively, for about two to three years. Although he began his bank industry employment as a teller, Respondent Baro eventually became trained as a real estate mortgage loan officer.

Beginning in approximately 1990, for a period of about four years, Wells Fargo Bank employed Respondent Baro. His last position at Wells Fargo Bank was as loan officer in the bank's mortgage lending unit. Through that period of employment, Respondent Baro provided mortgage lending services for about four of the individual consumers named below. After Wells Fargo Bank closed its mortgage loan department in the Fresno region, Norwest acquired Wells Fargo Bank's portfolio of business. Respondent Baro worked for Norwest over a period of about four months.

In about 1995, Respondent Baro decided to become self-employed in the capitalist realm of buying and selling commodities and stock market offerings. Then, he formed a business entity- Trinity Investment Group, which was to enable him to raise money to act as a speculator in commodities, stock and other investments from which he could make money.

Basic Structure of Trinity Investment Group, Trinity Investments or TIG

7. On October 17, 1997, Respondent Baro[2] filed with the Fresno County Clerk a fictitious business name statement for "Trinity Investment Group". The filing showed the intended business of Trinity was to be conducted by Respondent Baro as an individual.

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[2] Under the name "Cecil Baro" of 5358 Behymer Avenue, Clovis, CA 93611.

8. Respondent Baro initially operated Trinity from 224 Clovis Avenue, Clovis, California, but he eventually conducted Trinity's business from his personal residence. But, for some unknown period, Respondent Baro maintained another business address at 5588 Palm Avenue, Fresno, California.

9. During the entire duration of its operations, Trinity had no other owner, equity holder, chief executive officer or manager other than Respondent Baro.

10. After October 1997, Respondent Baro became wholly self-employed as the principal of Trinity. Although his wife had access to a bank debit card to a checking account of Respondent Trinity, Respondent Baro declared no other person acted as an employee or agent other than Respondent Baro.

11. On December 7, 2001, Respondent Baro closed the principal bank account[3] of Respondent Trinity.

Contentions of Respondent Baro as to the Business Model and Operations of Respondent Trinity

12. Respondent Baro offered several contentions in support of his argument that the Corporations Commissioner lacks authority or jurisdiction to have its Desist and Refrain Order sustained, to justify imposition of ancillary relief or to recover costs of its investigation and prosecution against respondents. The contentions include that:

> i. Trinity was a home based start-up company in the business of speculation. The sole proprietorship failed due to circumstances, including the terrorists' attack on America on "9/11/01," which were beyond his control.
>
> ii. The nine individuals, or couples, came to Respondent Baro for his assistance when individually those persons faced financial straits or unsettled debts problems. Respondent Baro avers that he presented those persons with sufficient information and details regarding him, including his record of bankruptcies, so that the nine sets of consumers could make individualized informed and intelligent decisions.
>
> iii. The aggrieved investor-consumers, collectively, put into the control of Respondent Baro over four hundred thousand dollars ($400,000) as "loans" to Respondent Baro to operate Trinity, which was a start-up company. The investor-consumers knew that Respondent Baro would (i) use the money

[3] Checking Account Number 11973-03838, Bank of America, Fresno.

to speculate in stocks, bonds and commodities, and (ii) use the money for his personal living expenses.

iv. The "loan contracts" that Respondent Baro, through Trinity, made with the aggrieved investor-consumers do not involve "securities." Hence, the Corporations Commissioner has nothing to regulate or supervise with regard to Respondent Baro's relationship with his "private creditors."

v. Respondent Baro had extensive experience in mortgage lending, which is not an area of business practices regulated by Corporations Commissioner. Respondent Baro's twenty-five years of experience in lending practices enabled him to competently serve his private creditors.

vi. Respondent Baro engaged in extensive discussions with the aggrieved investor-consumers, before they "loaned" money to Trinity, regarding the investor-consumers' respective financial plans, current savings, retirement plans, and investment and properties owned. Even though Respondent Baro's discussions prompted him to tell the aggrieved investor-consumers that Trinity's contracts would pay the consumers greater interest vis-à-vis other investments, such discussions did not constitute financial planning or investment advice.

vii. The contracts of Trinity did not provide for a "fee" payable to either Respondent Baro or Trinity because Respondent Baro did not "charge a fee" to his "private creditors." Moreover, he was not compensated when he received over $400,000, even though Respondent Baro declared the money was for his "right of use and enjoyment."

viii. Respondent Baro opened brokerage accounts with money provided to him by aggrieved investor-consumers. But, the transactions he executed through brokerage firm accounts in stocks, bonds, options and other capital instruments did not constitute activity as a broker-dealer. Such activity by Respondent Baro did not require a license issued by Corporations Commissioner of the Department of Corporations or any other government agency.

ix. Respondent Baro told the aggrieved investor-consumers, who were his "creditors," that Trinity was a company he started and that the investor-consumers knew, or

should have known, that any money the investor-consumers put in Trinity was the same as giving him the money.

x. Respondent Baro informed his "creditors" that, through Trinity, he made investments in commodities, stocks and real estate so long as the investment was a good transaction in which he could invest.

Admissions by Respondent Baro

13. At the hearing of this matter, and in testimony under oath given in a transcribed interview with Complainant's counsel on May 2, 2003, Respondent Baro made several admissions[4], which included:

i. Trinity was a sole proprietorship that he started in 1997. He used Trinity to make investments in anything that could make money.

ii. He had eight or nine "private party creditors." Some of his creditors had been prior customers of Wells Fargo Bank, where he had worked as a mortgage loan officer.

iii. After the stock market collapsed, circa 1999-2000, and after the economic slow-down after the terrorists' attack on "9/11," through Trinity he lost at least $400,000.

iv. He invested in commodities, such as pork bellies, wheat and corn as well as some stock options. He had a stock brokerage firm account with ED&F. Man Financial of Chicago, Illinois. The stock brokerage firm account, which he opened in November 1998, was under his personal name rather than under the business name of Trinity.

v. The money received from consumers was designated as "working capital." Although neither he nor Trinity had employees, he paid various individuals to do jobs for him from the working capital of Trinity. But, he hired no consultants, such as certified public accounts or financial planners, to assist with Trinity's operations.

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[4] Evidence Code section 1220.

vi. Each transaction with aggrieved investor-consumers herein was set up like a high-risk loan because he could not give security to his "creditors." He paid monthly his "creditors" 25% interest per annum. He paid his "creditors" by check through checks under an account in the name of Trinity.

vii. The money he received from his "creditors" were loans. In turn, he loaned that money to the distinct company entity - Trinity. But, the money was used as working capital for which he had a "right of use and enjoyment." He speculated with the money so as to "invest" in commodities or stocks, whichever he thought would generate the highest monetary return. By himself, he researched the stocks and commodities into which he placed the money received from the consumers.

viii. His "private party creditors" had a choice to place money in one of two methods to earn interest - a standard fixed rate of 25% per annum, or a "floating rate" that could result in a 33% per annum interest return. All of the affected "creditors" chose the fixed rate of return for monthly interest payments.

ix. Some of his "creditors" directed him to deposit monthly interest payments directly into personal bank accounts.

x. Annually, he sent his "creditors" federal tax reporting 1099 forms.

xi. The monies he received from his "creditors" were not loans, but were "structured like a loan."

xii. While operating Trinity, he drew compensation from working capital at $2,500 per month. In addition to $2,500 per month as compensation, at the end of calendar years he withdrew any access money in Trinity's account as his income. For the few years of operations of Trinity the money varied "anywhere from $20,000 to $50,000."

xiii. Out of Trinity's account, he paid expenses, such as brokerage firm fees, utility bills, cellular telephone and pager bills, cost of supplies and equipment cost.

xiv. He named his "private party creditors" as: Ed Post, Rastus Henderson, Steve Moe, Mrs. Tanji, Margaret Tafoya, Diana Mora, Jack Tolmosoff, Brian Taniguchi and Ms Hughes.

xvii. During his dealings with Ms Margaret Tafoya he noticed that she was forgetful. He thought that she might have a form of senility. He talked with Mrs. Tanji and Ms Tafoya about the latter's forgetfulness. Later, he learned that Ms Tafoya had a diagnosis of minor dementia.

xviii. He planned to build Trinity so that he could sell the business. A deal to sell the business never materialized, although an unnamed individual supposedly expressed an interest in acquiring the business.

xix. He owes his "creditors" a sum of money between $300,000 and $400,000.

xx. The money used to pay compensation to himself came from Trinity's "profits" or the working capital of Trinity. The money used to pay monthly interest payments to "creditors" came from profits or working capital of the separate entity - Trinity.

xxi. He never informed or told any of his "creditors" that the money invested through Trinity was a business loan to him. He avers that the transactions were "structured like a loan."

xxii. The money obtained from "creditors" was used for whatever purpose he saw fit. As long as he met his obligation to his creditors, he could use the money anyway he wanted to apply it.

xxiii. He injected $60,000 of his own money into Trinity.

xxiv. Through Trinity, he never invested in real estate.

xxv. The largest amount of money invested through Trinity was about "$50,000 to $100,000," but he was not

certain of the exact amount or the precise creditor who made the particular investment.

xxvi. He never told any consumer-investor where to procure money that might be invested in Trinity. He never discussed with individual consumers the source of investment money.

xxvii. He learned that some investors borrowed money from equity in real property holdings, but he did not advise or tell them to acquire money by that method.

xxviii. He did assist three or four consumer-investors to refinance respective houses. And, he learned that such persons used some of the money to place in Trinity.

xxix. No independent accounting firm audited Trinity.

xxx. He told consumer-investors that a Chicago firm expressed an interest to buy Trinity.

xxxi. He never told any consumer-investor that investment money would be used in real estate projects.

Respective Backgrounds and Complaints of Aggrieved Consumers

14. Mr. Ed Post appeared at the hearing of this matter. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of indignation and outrage towards Respondent Baro, Mr. Post showed that he is a credible[5] and reliable witness.

Mr. Post is 69 years old.

For more than 30 years, Mr. Post worked for the United States Postal Service as a mail carrier.

In about 1995, Mr. Post first met Respondent Baro when the latter worked as a loan officer for Wells Fargo Bank. As a bank employee, Respondent Baro assisted Mr. Post to secure a mortgage for residential real property that became the home of Mr. Post.

About three years elapsed before Respondent Baro telephoned Mr. Post regarding Trinity. At that later time in 1998, Mr. Post invited Respondent Baro to come to his home to

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[5] Government Code section 11425.50, subdivision (b), third sentence.

discuss business prospects. Respondent Baro possessed confidential information he had gleaned from the records Mr. Post had established with Wells Fargo Bank. Respondent Baro took from his briefcase copies of mortgage-related documents Mr. Post recognized as having been in records with Wells Fargo Bank. Respondent Baro stated that by his estimation the appreciated value of Mr. Post would generate equity for the homeowner. Respondent vigorously solicited Mr. Post to invest in the offering of Respondent Trinity.

Respondent Baro made a sales pitch to Mr. Post that Trinity paid very good returns and the business had a goal of helping "little people" pay off mortgages and accumulate money for retirement. Respondent Baro told Mr. Post that he managed assets of twenty-five million dollars, and that his clients included doctors and other professionals. Respondent Baro also stated to Mr. Post that Respondent Baro's father had invested $400,000 in Trinity, and also Respondent Baro had invested his own money in Trinity. Respondent Baro promised a 25% per annum return on any investment made by Mr. Post. Respondent Baro gained the attention of Mr. Post by stating that invested money would be funneled into commercial real estate development such as shopping center construction projects, which were primarily located in Southern California. Mr. Post understood from Respondent Baro that builders for such developments needed money for short periods of time.

Mr. Post heard Respondent Baro described an extensive business history that purportedly included his work with insurance companies, check cashing firms, and death benefits businesses.

On some occasions Respondent Baro told Mr. Post that Respondent Trinity had 12 to 15 clients. On other occasions Respondent Baro stated that he had 40 to 50 clients.

Respondent Baro allayed Mr. Post's apprehension by insisting that commercial developments in California regarding shopping centers construction carried minimal risks.

Respondent Baro informed Mr. Post that as an investor in Respondent Trinity he would be required to commit to a term of two years with a minimum investment principal of $20,000. Respondent Baro offered Mr. Post two options: a supposed fluctuating rate that allowed a return of 33% per annum that was "tied to stock markets," or a fixed rate of 25% per annum "tied to secure instruments." Mr. Post heard Respondent Baro say Respondent Baro would be compensated, through Trinity, by way of receipt of a percentage return that exceeded more than 35% per annum interest as paid by a borrower to Trinity. Respondent Baro told Mr. Post that the big commercial developers willingly paid for use of the money offered by Trinity.

Before Mr. Post placed any money with Respondent Trinity, Respondent prepared written proposals in the form of financial advisory analyses as tailored for Mr. Post's particular financial condition at the time. One document that Respondent Baro prepared for Mr. Post was called "summarized analysis" for the accelerated payment of mortgage pay-off. Respondent Baro also prepared a document called a "personal new account information" form that captured information specifically crafted for Mr. Post. Respondent Baro expressed to Mr. Post that he

had experience in financial advisory matters. On one occasion, Respondent Baro told Mr. Post that he did not need any form of license to engage in the investment ventures offered by Respondent Trinity.

Respondent Baro assisted Mr. Post to obtain a home equity loan from which Mr. Post invested the proceeds of the loan in Trinity.

Respondent Baro promised that with the investment amount that they discussed, Mr. Post would have a projected monthly income of $1,659.35. Also, Mr. Post sought to reach a goal of being able to completely payoff the mortgage on his house by November 16, 2004. Mr. Post was "sold" on the investment when Respondent Baro told Mr. Post that the latter would own his home "free and clear" with proceeds from his investment through Trinity. More importantly, Mr. Post expected to fully retire before the year 2003.

Between 1998 and the end of 2000, Mr. Post placed into the possession of Respondent Baro the sum of $79,648.85. On January 29, 2001, Mr. Post "invested" another $3,000 in Trinity.

For about a period of two years, Mr. Post received payment from Respondent Trinity. Mr. Post received interest payment for two years. But, Mr. Post received the last interest payment in December 2000.

15. Mr. Steve C. Moe appeared at the hearing of this matter. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of indignation and outrage towards Respondent Baro, Mr. Moe showed that he is a credible and reliable witness.

Mr. Moe's appearance suggests his age to be between 55 years and 65 years.

Mr. Moe is a junior high school teacher.

Mr. Moe and his wife hold a mortgage on their personal residence in Fresno County. Mr. Moe and his wife have some investment experience as the couple owns a single rental income property site in the Fresno County area. Before meeting Respondent Baro, Mr. Moe had a small amount of money in a mutual fund. Excluding his interests in real estate, Mr. Moe estimates his liquid net worth to have been $15,000 when he met Respondent Baro.

In about July 2000, Mr. Moe met Respondent Baro. The men met through an introduction made by Mr. Post, who had told Mr. Moe of the investment opportunity offered by Respondent Baro. Mr. Moe's mailman had been Mr. Post, who told Mr. Moe about his then "successful" investment in Trinity that resulted in monthly interest earnings at a rate of 25% per annum.

On or about the date of their first meeting, Respondent Baro told Mr. Moe that he had worked as an investment broker for Wells Fargo Bank. In July 2000, Respondent Baro informed Mr. Moe that his work was as an investment broker.

At the time of their first meeting, Respondent Baro instructed Mr. Moe regarding the supposed investment opportunity available through Trinity. Respondent Baro informed Mr. Moe that he had invested money over a period of six to seven years and that he had never lost any investor's money. Respondent Baro enticed Mr. Moe with claims that Trinity made short term loans to builders and developers of large commercial projects, such as shopping centers. Supposedly the commercial developers, being in need of money for very short durations, were willing to pay Trinity more than 25% per annum interest for use of the money.

Respondent Baro told Mr. Moe of two optional investment programs as offered through Trinity. Respondent Baro described a fixed term return "tied to secure instruments" for a period of twenty-four months that could earn 25% interest on a minimum investment of twenty thousand dollars. In the alternative, Trinity offered a return from a "standard investment pool (open ended, no minimum, no maximum, 3 year average – 33%) tied to stock markets." Mr. Moe chose the former option as the investment vehicle he would pursue with Respondent Trinity. Respondent Baro promised Mr. Moe to pay him $625 each month as interest on the principal investment over the twenty four months of the contract based on 25% per annum.

Within the month of meeting Respondent Baro, Mr. Moe agreed to put money into the investment venture offered through Trinity. Mr. Moe and his wife took out a second deed of trust on his personal residence as the means of actually placing an investment with Respondent Trinity in the amount of $30,000.

In mid-July 2000, Respondent Baro went to Mr. Moe's home to retrieve a cashier's check for $30,000. Mr. Moe signed a contract called personal new account information form, which Respondent Baro created unilaterally.

After the date Mr. Moe and his wife placed $30,000 as investment with Trinity, the couple received 11 payments over a span of mid-2000 until September 2001. Respondent Baro, through Respondent Trinity, paid Mr. Moe interest payment of about $6,875.

16. Mr. Rastus Lee Henderson appeared at the hearing of this matter. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of indignation and outrage towards Respondent Baro, Mr. Henderson showed that he is a credible and reliable witness.

Mr. Henderson is 62 years old.

Mr. Henderson is the next door neighbor of Mr. Moe. Mr. Post was mailman for Mr. Henderson and Mr. Moe. Mr. Post told Mr. Henderson that Trinity Investments was a rewarding investment opportunity.

Mr. Post introduced Respondent Baro to Mr. Henderson. On the first meeting in early 2000 between Respondent Baro and Mr. Henderson, Respondent Baro came to the residence of Mr. Henderson. Mr. Henderson told Respondent Baro about his serious financial problems that included a second mortgage on his residence. Respondent Baro prepared a financial analysis of Mr. Henderson's financial profile. Later, Respondent Baro presented Mr. Henderson with a sales pitch regarding Trinity. Mr. Henderson recalled Respondent Baro specifically informing him that Trinity only invested in real estate development projects. Respondent Baro told Mr. Henderson that Trinity loaned money to building contractors. Respondent Baro also stated that money of investors in Trinity would be "pooled together" to make loans to building contractors. Respondent further informed Mr. Henderson that as an investor in Trinity he could earn interest at a rate of 25% per annum and that he would receive monthly interest payments. Respondent Baro emphasized to Mr. Henderson that no risk would attach to the investment of his principal, but interest returns could fluctuate. Respondent Baro told Mr. Henderson that after a two-year term, the investment principal would be returned to him. But, in order to become an investor in Trinity, a minimum investment of $25,000 had to be made.

On April 3, 2000, Mr. Henderson placed $24,000 with Respondent Baro's Trinity. Two weeks later, Mr. Henderson "invested" another $17,565.16. In late September 2000, Mr. Henderson put another $28,837.51 into Respondent Baro's possession. In December 2000, Mr. Henderson put an additional investment of $20,000 into Trinity. In time, Mr. Henderson placed more than $90,000 in Trinity, through Respondent Baro's solicitations.

Mr. Henderson received interest payments from Trinity in an amount of $25,385. But, in the latter part of 2001, monthly interest payments ceased coming to Mr. Henderson.

In time, Mr. Henderson filed complaints with the Better Business Bureau in Fresno County and the Department regarding practices of Respondent Baro and Trinity.

17. Ms Kuzuko Tanji appeared at the hearing of this matter. By the consistency of her testimony, her attitude towards the proceedings, and her sincere expression of indignation and disappointment with Respondent Baro, Ms Tanji showed that she is a credible and reliable witness.

Ms Tanji is 66 years old.

In 1994 or 1995, Ms Tanji met Respondent Baro at the Wells Fargo Bank's branch in Merced. In that she had been a widow for more than 20 years, she assumed full responsibility for two sons and a family business that consisted of an almond farm. She met Respondent Baro in connection with her application for a loan for the farm.

A couple of years after first meeting Respondent Baro at Wells Fargo, in the early Fall of 1997 Ms Tanji received an unsolicited call from Respondent Baro. Respondent Baro said he was in his own business. Respondent Baro told Ms Tanji that he had investment opportunities

for her in real estate and stocks. Respondent Baro asked for a meeting at her personal residence to present her with investment offerings. Respondent Baro said he wanted to talk with her face to face at her residence. Respondent Baro had her address that he took from documents Ms Tanji had left with Wells Fargo Bank. Within a week of his telephone call, Respondent Baro met Ms Tanji at her home.

About the time of their initial meeting in 1997, Respondent Baro talked about his company -Trinity, which he said invested mainly in real estate development projects. Respondent Baro said Trinity made high interest loans for construction projects. In that Ms Tanji had no available liquid assets, Respondent Baro told her that he could arrange the refinancing of her residence and farm so as to use the equity in that real property. Respondent Baro introduced Avco Financial to Ms Tanji.

After the refinancing of her real property, in November 1997 Ms Tanji presented Respondent Baro with two checks, respectively in amounts of $20,000 and $38,362.43.

After putting more that $58,000 into the possession of Respondent Baro for placement in Trinity, Ms Tanji received interest of $1,400 to $1,500 about every month for almost two years.

Because of the apparent success of her dealings with Trinity, Ms Tanji recommended Respondent Baro's business as an investment vehicle to Amy Hughes and Margaret Tafoya.

After her initial investment of $58,000, Ms Tanji made additional contributions to Trinity. On June 10, 1999, she placed $3,000 with Trinity. And, on July 10, 1999, Ms Tanji put another $4,825 in Trinity.

In 2000, Respondent Baro advised Ms Tanji to refinance her residence with a company called The Associates. The refinance resulted in The Associates deducting from Ms Tanji's loan proceeds $15,000 as further investment by her in Trinity.

But, by the year 2000, Ms Tanji experienced difficulty in receiving interest payment on time. In about March 2001, Ms Tanji last received money from Respondent Trinity.

18. Ms Margaret Tafoya appeared at the hearing of this matter. By the consistency of her testimony, her attitude towards the proceedings, and her sincere expression of disdain towards Respondent Baro, Ms Tafoya showed that she is a credible and reliable witness.

Ms Tafoya is 65 years old.

Ms Tafoya, whose former married name was Villanueva, has worked as a housekeeper and caregiver for several years. In the past, Ms Tafoya worked as a housekeeper for Ms Tanji.

In 1998, Ms Tafoya met Respondent Baro when he was meeting with Ms Tanji, who recommended Trinity as a profitable investment vehicle. At the first meeting, Respondent Baro told Ms Tafoya about his business of making investments. Ms Tafoya told Respondent that she had little experience with investment; but, she sought to accumulate money for her retirement. Ms Tafoya heard Respondent Baro say that he had made money for many people and that his system of investment was sound and safe.

Respondent informed Ms Tafoya that she could earn 25% per annum interest on money that she placed in Trinity.

Respondent traveled to the home of Ms Tafoya. Because she had lived in a mobile park residence, Respondent Baro told her that refinancing of the dwelling would not produce any significant equity. Then, Respondent Baro suggested that Ms Tafoya take out a loan on her automobile. She secured $5,000 from that financial arrangement. Thereafter, Ms Tafoya's daughter helped her to acquire a second vehicle so that she obtained another $15,000 to put with Trinity.

Eventually, Ms. Tafoya placed $25,000 in Trinity, through Respondent Baro's direction.

19. Mrs. Amy Hughes appeared at the hearing of this matter. By the consistency of her testimony, her attitude towards the proceedings, and her sincere expression of indignation and outrage towards Respondent Baro, Mrs. Hughes showed that she is a credible and reliable witness.

Mrs. Hughes appears to be about 40 to 45 years old.

Mrs. Hughes works as a traveling nurse.

In May 1998 Mrs. Hughes met Respondent Baro. She learned about Respondent Baro from Ms Tanji, who recommended him as an avenue to a good investment – Trinity.

Upon meeting Respondent Baro, Mrs. Hughes understood Respondent Baro to be an investment broker. Respondent Baro told her he had worked for Wells Fargo Bank, but at their meeting he said he had formed his own business, which was lucrative. Respondent Baro said that Trinity bought and sold high end real estate. Respondent informed Mrs. Hughes that Trinity consisted of multi-million dollar investors, which included medical doctors and Respondent Baro's family members and friends. Mrs. Hughes learned from Respondent Baro that Trinity did not advertise to the general public, but rather invited investors to join Trinity. She heard Respondent Baro describe Trinity as having offices in New York, Chicago and Los Angeles. Mrs. Hughes heard Respondent Baro say that Trinity also bought commodities. But, Ms Hughes expressed that she did not have an interest in commodities trades, but rather wanted her money placed in safe investments. Respondent Baro gave Mrs. Hughes utmost assurance that the investment would be very safe in real estate related loans to developers. Respondent

Baro promised Mrs. Hughes a return on an investment made with Respondent Trinity to be fixed at 25% interest per annum.

Mrs. Hughes and her husband placed about $20,000 in Trinity through solicitations from Respondent Baro.

With the amount of the principal investment, Respondent Baro stated an interest payment of $429 monthly would be made to the couple and after two years Trinity would return the principal to Mrs. Hughes and her husband.

For 1998 and 1999, Mrs. Hughes received from Respondent Trinity monthly payment that supposed represented interest payment. In 2001, Trinity ceased making monthly interest payment to Mrs. Hughes. And, she never received the return of the principal investment amount of about $20,500.

20. Mr. Brian Taniguchi appeared at the hearing of this matter. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of indignation and outrage towards Respondent Baro, Mr. Taniguchi showed that he is a credible and reliable witness.

Mr. Taniguchi appears to be about 35 to 40 years old.

Mr. Taniguchi operates a telephone directory delivery service in Fresno County.

In July 1999 Mrs. Amy Hughes referred Respondent Baro and Trinity to her brother - Mr. Taniguchi.

Before Mr. Taniguchi signed the contract with Trinity and placed money under the control of respondent, Respondent Baro told the investor-consumer that Trinity made short term loans to construction companies to finance real estate projects. Respondent Baro also told Mr. Taniguchi that Trinity consisted of several people who worked in Fresno County and Los Angeles. Mr. Taniguchi heard Respondent Baro say that he had placed $400,000 of his family and his money into Trinity.

During the three months between the date of their meeting and the date Mr. Taniguchi signed the Trinity contract form, Respondent Baro told Mr. Taniguchi that Trinity would pay him a fixed income of 25% per annum on any investment and that the investment was tied to secured instruments. But, Mr. Taniguchi adamantly told Respondent Baro that he was not interested in stock investments. Respondent Baro assured Mr. Taniguchi that money placed in Trinity would be safe.

Also three months elapsed before Mr. Taniguchi invested with Respondent because he had to liquidate a 401K plan with former employer in order to raise money for placement with Trinity.

After a few meetings, Mr. Taniguchi signed in September 1999 a two-year term contract with Respondent Trinity.

Mr. Taniguchi invested $56,046.86 in Trinity through Respondent Baro.

In July 2001, Mr. Taniguchi informed Respondent Baro that he did not wish to renew the investment contract upon its expiry in September 2001. Respondent promised him his investment would grow by about five times if he remained an investor in Trinity. To placate Mr. Taniguchi, Respondent Baro presented the consumer-investor with a Trinity check in the amount of $7,000.

From late 1999 until 2001, Trinity sent Mr. Taniguchi monthly interest payments at a rate of $1,167 per month. But the interest payments did not arrive at consistent times. Then in mid-2001, the interest payments stopped.

Respondent Baro, through Trinity, never returned to Mr. Taniguchi the principal money he had entrusted with Trinity.

21. Mrs. Diana Mora appeared at the hearing of this matter. By the consistency of her testimony, her attitude towards the proceedings, and her sincere expression of indignation and outrage towards Respondent Baro, Mrs. Mora showed that she is a credible and reliable witness.

Mrs. Diana Mora met Respondent Baro in 1993 when their respective sons attended the same junior high and participated on the school's wrestling team.

In 1999, Mrs. Mora's brother recommended that she confer with Respondent Baro to gain help with the troublesome financial difficulties that Mrs. Mora and her husband experienced. Respondent Baro came to her home of Mrs. Mora and her husband - Chon Mora. Respondent Baro had presented a written analysis. Respondent Baro advised the couple to refinance rental income property, which they owned. Also, Respondent Baro suggested that Mrs. Mora and her husband take out a second mortgage on their personal residence as a means to consolidate debts. After several meetings with the couple, Respondent Baro told them that their financial plan warranted that they contemplate investing in Trinity.

Respondent Baro told Mrs. Mora that an investment in Trinity could make her husband and her monthly interest at a rate of 25% per annum. Respondent Baro described Trinity as a group of investors whose money was used to make loans to commercial real estate developers. Respondent Baro represented that Trinity had investors from many places, which included Sacramento and Chicago as well as Fresno County.

Respondent Baro guided Mrs. Mora and her husband to secure a second mortgage on rental property through a lending broker called The Associates of Modesto. With the proceeds

from the second mortgage, the couple paid off debts and invested $8,768.25 in Trinity. Mrs. Mora and her husband received interest payments for a few months. But, on nearly a daily basis, Respondent Baro asked the couple to put more money into Trinity. The Moras injected an additional $3,500 into Trinity.

22. Mr. Chon Mora appeared at the hearing of this matter. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of indignation and outrage towards Respondent Baro, Mr. Chon Mora showed that he is a credible and reliable witness.

When Mr. Chon Mora and his wife met Respondent Bora, respondent told the couple that he could help the couple with overcoming their credit problems. Respondent Baro led them into refinancing rental property that the couple owned. Concurrently, Respondent Baro told the couple about investment prospects with Trinity.

Mr. Chon Mora heard Respondent Baro say that Trinity made short term loans to builders who paid interest in excess of 25% per annum for use of Trinity's money.

On April 12, 2000, Mr. Chon Mora and his wife signed the Trinity contract.

Through Respondent Baro, Mr. Chon Mora and his wife invested about $12,268 in Trinity.

23. Mr. Jack Tolmosoff appeared at the hearing of this matter. By the consistency of his testimony, his attitude towards the proceedings, and his sincere expression of indignation and outrage towards Respondent Baro, Mr. Tolmosoff showed that he is a credible and reliable witness.

Mr. Tolmosoff first met Respondent Baro at Wells Fargo Bank in about 1995 regarding a home loan. At their meeting, Respondent Baro held employment with Wells Fargo Bank as a loan officer.

Several years passed before Respondent Baro in about March 2001 telephoned Mr. Tolmosoff. During the contact initiated by Respondent Baro, Mr. Tolmosoff heard Respondent Baro say that he had started an investment company called Trinity. After the initial telephone call, Respondent Baro made repeated and persistent calls that involved solicitations to invest in his company. During telephone calls, Respondent Baro told Mr. Tolmosoff that Trinity's investment in "big stuff" such as construction of sky scrapers and other large commercial development projects. Respondent Baro told Mr. Tolmosoff that developers willingly paid high interest because such builders avoided "red tape" of banks. Trinity supposedly made the borrowing process easy for developers.

Mr. Tolmosoff heard of no risk associated with making an investment with Trinity. Mr. Tolmosoff recalled no discussion with Respondent Baro regarding putting money in the stock market.

Respondent Baro told Mr. Tolmosoff that each month he and his wife would receive from Trinity monthly interest payments based on a return of 25% per annum. Respondent Baro told Mr. Tolmosoff that a contract with Trinity would have a two-year term. Mr. Tolmosoff understood the principal investment would not be at risk; however, the earned interest might fluctuate.

When Mr. Tolmosoff worked for his father's ranch, he had opened a retirement plan called a "simplified employee pension (SEP)." Mr. Tolmosoff had nearly $14,500 in the SEP when Respondent Baro solicited him to invest in Trinity.

Respondent Baro informed Mr. Tolmosoff that $14,000 met the minimum threshold as an investment in Trinity. Respondent prepared Trinity's contract (that is the document called personal new account information form) that showed Mr. Tolmosoff's initial investment at $14,000. Mr. Tolmosoff signed the contract on May 15, 2001.

Because Mr. Tolmosoff required three weeks to liquidate the SEP account, Respondent Baro became angry when the investor-consumer could not quickly put $14,000 into Trinity's account as established in his name. Respondent Baro told Mr. Tolmosoff that the investor's account had been opened and the account was being credited interest. Respondent Baro told the consumer that with a deposit of half the amount of the initial investment the investor's account could be maintained with Trinity. Mr. Tolmosoff told Respondent Baro that he had a bank line of credit from which he could acquire $7,000. Respondent Baro assured Mr. Tolmosoff that the advance from a line of credit would be returned upon Trinity's receipt of $14,000 that would come from the dissolution of the consumer's SEP account. In mid-May 2001, in order to preserve the supposed investment opportunity, Mr. Tolmosoff deducted $7,000 from a bank line of credit and transferred the money to Respondent Baro.

Trinity paid Mr. and Mrs. Tolmosoff monthly interest for a few months before the payments stopped.

24. Mrs. Sasanna Tolmosoff appeared at the hearing of this matter. By the consistency of her testimony, her attitude towards the proceedings, and her sincere expression of indignation and outrage towards Respondent Baro, Mrs. Sasanna Tolmosoff showed that she is a credible and reliable witness.

In early 2001, Respondent Baro contacted Mrs. Tolmosoff and husband (Jack) regarding prospects of investing in Trinity. Respondent Baro made about a half dozen visits to the couple's residence in order to sell them on the supposed benefits of investing with Trinity.

Respondent Baro said that Trinity's business involved investing in real estate development projects involving commercial, large construction sites. Mrs. Tolmosoff understood that Trinity bought property in foreclosure.

Respondent Baro proclaimed to the couple he and Trinity had been successful. He showed Mrs. Tolmosoff and her husband supposed financial records, including 1099 forms, that reflected other people's earnings with Trinity. Respondent Baro showed the couple a copy of two cashier's checks that supposedly represented money earned by investors in Trinity.

Respondent Baro stated that the couple could earn interest on any investment at a rate of 25% per annum. Respondent Baro told the couple that Trinity and respondent earned profits by charging Trinity's borrowers interest at 33%. Respondent Baro stated that the investment principal could be placed with Trinity for a minimum term of two years.

Complainant's Expert Witness

25. Mr. Jeff Robertson appeared at the hearing to offer expert witness evidence. Mr. Robertson's demeanor, his attitude towards the proceeding, the comprehensive nature of his testimony and his insight into the schemes and devices of Respondent Baro, showed Mr. Robertson to be a compelling, persuasive and credible witness.

For about twenty years, Mr. Robertson has been a forensic examiner of businesses operations. He is a certified fraud examiner. He is familiar with bank and financial records. He is a member of the Central Division of the California Fraud Center, and a member of the Association of Certified Fraud Examiners as well as the California Financial Crimes Investigation Association. Mr. Robertson holds a civil service classification of "senior corporations examiner" for the Department's Enforcement Division.

Mr. Robertson possesses such special knowledge, experience and education as to enable him to render expert witness opinions regarding the schemes, activities and operations of Respondent Baro and Trinity.

26. In his capacity as a forensic examiner in the Department's Securities Enforcement Division, Mr. Robertson identified, secured and reviewed records pertaining to Respondent Baro and Trinity's financial activities that involved the apparent sales of securities. The reviewed records covered a three-year period of time that ended in December 2001. The ultimate opinion reached by Mr. Robertson was that Respondent Baro appropriated nearly $420,000 from nine sets of aggrieved investor-consumers by way of a worthless scheme that did not show an actual business enterprise because no genuine service or product was available for marketing by Trinity.

27. Mr. Robertson located bank and brokerage firm accounts that held money that aggrieved consumers had provided Respondent Baro for investments through Trinity. The accounts included two checking accounts with Bank of America; one brokerage stock trading

account with ED& F Man Financial, Inc.; two stock trading accounts with Smith Barney; and, one stock trading account at Datek Online Financial Services.

Mr. Robertson's analysis of the several bank and stock trading brokerage account revealed, among other things, the following:

Bank of America

i. Bank of America account number 11973-03838 bore the name "Cecil Baro [doing business as] Trinity Group." The account was the primary bank account used by Respondent Baro over the three years that ended in December 2001. The Bank of America account opened on September 24, 1998, and closed on December 7, 2001. During that three year period, money credited to the account totaled $496,720.

The Bank of America account records showed that no loans had been made to construction companies, real estate developers or building contractors over the three years preceding closure of the account. The bank account reflected no deposits that indicated repayment of any loan from construction companies, developers or building contractors.

ii. Bank of America account number that ended in numerals "08391" was the personal account of Respondent Baro. That check writing account opened on March 16, 1999, and closed on August 25, 2000.

Man Financial

iii. On November 13, 1998, Respondent Baro opened a brokerage firm trading account with ED&F Man Financial, Inc. To open the account, Respondent Baro wrote a check for $12,000 from the Bank of America checking account 03038 from which the only money on deposit had been from the investment by Mr. Post in an amount of $77,000.

Between November 13, 1998, and February 2, 2001, Respondent Baro deposited into the Man Financial about $111,721 of money that the aggrieved investor-consumers had supposedly invested in Trinity.

Monies in the Man Financial account were used by Respondent Baro to trade in various commodity and futures transactions.

Respondent Baro executed a margin agreement that enabled him to trade securities on margin.

While the account with Man Financial remained opened, Respondent Baro transferred the sum of $86,070 into the account from Bank of America account number 11973-03838 in order to cover shortages in the brokerage account. During the time the Man Financial account functioned, the net effect of trading by Respondent Baro was that the brokerage account incurred a net loss of approximately $27,750 by the time the account closed on February 2, 2001.

Even though money used to open the Man Financial account, Respondent Baro made false statements that included: "[a]ll funds being deposited are proprietary. I have not and will not solicit any outside individuals or monies for the purpose of this commodity account." Respondent Baro falsely represented to Man Financial that he owned all the money deposited into the brokerage firm account with that company.

Smith Barney

iv. On December 7, 1997, under the name "Cecil Baro," Respondent Baro opened brokerage account number 507-17193-13 with Smith Barney. The account closed on December 10, 1998. During the period the account remained opened, Respondent Baro deposited more than $95,400 into the account. In the time frame of June-July 1998, Respondent Baro directly deposited into the Smith Barney account two checks by Ms Amy Hughes in the sum of $20,537.

Respondent Baro executed a margin agreement that enabled him to trade securities on margin.

28. The forms that Respondent Baro used to open brokerage accounts with Man Financial and Smith Barney contained false, misleading and deceitful information.

On the Smith Barney application to open a new account, Respondent Baro indicated the new account was for an "individual," but he did not check the box for "sole proprietorship." Respondent Baro did not set out his personal social security number, but rather he set out on the Smith Barney application the tax identification number as procured for Trinity. On the application form, Respondent Baro represented that he had operated Trinity since 1991, even though a fictitious business name for Trinity was not secured until 1997. Nowhere on the application form with Smith Barney did Respondent Baro set out that

Trinity was a "start up company," or that he was in the business of speculation. Rather, Respondent falsely stated that the nature of his business was "consulting."

On the application form, Respondent Baro stated that his annual compensation was $165,000, and the primary source of his income was from investments and compensation. He falsely claimed his net worth to have been $650,000. Respondent Baro misrepresented that he had investments in businesses that were worth $212,000, he had interests in real estate with a net value of $250,000, he had non-liquid assets at $402,000 and he had total assets valued at $715,000.

29. Senior Corporations Examiner Mr. Robertson established that the only money deposited into the Smith Barney and the Man Financial accounts came from the "investment' money of aggrieved consumer-investors. Respondent concealed from the brokerage firms that the true source of money he used for trading came from persons he had misled and deceived.

30. Respondent Baro used the terrorist attack on September 11, 2001, as an excuse for adverse impact on respective investment accounts of investors in Trinity. But, Senior Corporations Examiner Mr. Robertson showed that on Monday, September 10, 2001, Trinity's bank account has a balance of about $330.

Matters in Aggravation

General Pattern of Fabrication, Exaggeration and Deception by Respondent Baro

31. Respondent Baro engaged in a pattern of consistent and repeated fabrications and hyperbole regarding the nature of his experience, skill and expertise that misled the aggrieved investor-consumers. Further, Respondent Baro deliberately misrepresented the actual nature of Trinity so as to deceive the aggrieved investor-consumers. And, Respondent Baro never disclosed to the individual investor-consumers various facts that may have dissuaded those investor-consumers from placing money in Trinity.

Respondent Baro consistently told aggrieved consumers that Trinity was an organization that included skilled and knowledgeable professionals in addition to himself. He alluded to being part of a syndicate or organization that had operations in Chicago, New York, Arizona as well as California.

Bankruptcy Proceedings

32. In September 17, 1992, Respondent Baro filed for bankruptcy. The bankruptcy court issued an order of discharge on May 26, 1993. On August 27, 1997, under number 9717144, Respondent Baro filed a second bankruptcy action, which was dismissed on July 22, 1998. On January 26, 1999, Respondent Baro's wife - Teresa - filed a bankruptcy action, which was dismissed on May 6, 1999. On December 1, 1999,

Respondent Baro filed a bankruptcy action under number 9960480. On February 16, 2000, Respondent Baro filed another bankruptcy action under number 10968. On March 8, 2000, Respondent's wife - Teresa - filed a bankruptcy action under number 11826. On March 9, 2000, Respondent's bankruptcy action, under number 10968, was dismissed. On July 7, 2000, Respondent Baro's wife's bankruptcy, under number 11826, was dismissed.

33. Respondent never disclosed to any of the aggrieved investor-consumers that before he solicited money from them that he and his wife had entered into various bankruptcy proceedings. Nor did Respondent ever tell the investor-consumers that while Trinity held their money and before he closed Trinity's operations in December 2001 that he and his wife had filed for bankruptcy protection.

34. When Respondent Baro filed for personal bankruptcy in December 1999 and again in February 2000, he failed to identify "Trinity Investment Group," or any other business, as his "sole proprietorship," or as a "dba" as required by bankruptcy law.

In bankruptcy case number 99-60480-B-7, Respondent Baro's petition's first page required the debtor to identify and list "ALL OTHER NAMES..." Respondent Baro did not list the name of "Trinity" or any variant thereof. On the petition, Respondent Baro listed only one creditor: Norwest Mortgage, Inc., his former employer. Respondent Baro did not set out on the bankruptcy petition the name of any of the aggrieved consumers, who are now claimed to be "private party creditors." Respondent Baro also neglected to give the name of "Trinity" or any name of the aggrieved consumers on the petition in bankruptcy case 00-10968-B-13.

Suspended License of the Department of Real Estate

35. On or about December 20, 1995, the California Department of Real Estate ("DRE") issued conditional real estate salesperson license number 01204398 to Respondent Baro. On June 22, 1997, the DRE suspended Respondent Baro's conditional salesperson license due to Respondent Baro's failure to meet the educational requirements specified in Business and Professions Code section 10153.4. Effective on December 20, 1999, the suspended conditional real estate salesperson's license expired.

36. A real estate broker never employed Respondent Baro during the time he held a conditional real estate salesperson license.

37. After June 1997, Respondent never disclosed to any of the aggrieved investor-consumers that before he solicited money from them that the Commissioner of the Department of Real Estate had suspended a conditional real estate salesperson license that had been issued to him.

Absence of Organization or Indicia of An Actual Ongoing Business Operation for Trinity

38. Although Respondent Baro filed only one fictitious business name statement for Trinity, over the years he used various appellations for the sole proprietorship, which included "Trinity Investments," "Trinity Group," "Trinity" and "T.I.G."

Respondent Baro told various investor-consumers that his company - Trinity - was successful and that it had been in existence for many years. Evidence at the hearing of this matter established Trinity was not an actual going concern or real business entity. Trinity had no true operations, no earned assets, no discernible inventory, no actual revenue earned from providing goods or services, and no profits as derived from legitimate business functions. The only "income" of Trinity consisted of monies Respondent Baro appropriated from the aggrieved investor-consumers.

Respondent falsely delivered documents to the investors in Trinity that the operation was viable by way of sending the consumers IRS 1099 forms. But the forms often set out greater interest payments than the consumers were actually paid by Trinity.

Even though Trinity never had employees, Respondent Baro obtained for Trinity federal Employer Identification Number (EIN) 770469996. Respondent Baro used the EIN to open various brokerage trading and bank accounts. Respondent Baro used the EIN to generate bogus, false and misleading 1099 interest reporting forms that he transmitted to aggrieved consumer-investors. When Respondent Baro made sales presentations to investor-consumers as prospects from whom he could extract money, Respondent Baro used false 1099 forms that showed large amounts of money as supposed interest payments; but, the false forms were only used as deceptive "hooks" to attract consumers to put money into Trinity.

Respondent Baro's Lack of Licensure in Investments or Financial Advisory Services and Lack of Status to Offer Investment Advise or to Serve as Custodian of Retirement Money.

39. The records of the Department do not reveal any qualification, permit or license that vested in Respondent Baro authority to sell, issue or transfer securities in the State of California.

40. The Department's records do not disclose any application, filing, qualification, registration, certificate or license that authorized Respondent Baro to act as a broker-dealer, investment adviser or agent to a broker-dealer or investment adviser.

41. Respondent never worked as an employee of a stock broker, brokerage firm or investment company. Yet, Respondent Baro assumed the role of an investment adviser with many of the aggrieved investor-consumers. Respondent Baro instructed and encouraged several investor-consumers to "rollover" or extinguish 401K and SEP accounts so as to transfer retirement money to Trinity. Respondent Baro gave investor-consumers financial

planning advice worksheets, and he gave the investor-consumers elaborate claims regarding Trinity's ability to pay extraordinary interest payments. But, Respondent Baro failed to disclose to the aggrieved investor-consumers that he had no license to handle investment money, or no certificate to provide advice on investments or no permit to trade in securities.

Respondent Baro portrayed himself to many of the aggrieved investor-consumers as being an "investment manager." Respondent Baro used business cards that included terms as "Investment-Finance," "EVP (executive vice president) – Investment Manager."

Respondent Baro wrote to third parties in a manner as to project himself as an investment professional; as in the instance of a letter to a banker named Cathy Winchester. The letter to Ms Winchester, on behalf of Ms Tanji, provided the lender's agent the supposed investment account balance and maturity date of the investment in Trinity that existed under the name of Mrs. Tanji. The Cathy Winchester letter that pertained to Mrs. Tanji gave the reader the impression that Mrs. Tanji's investment with Trinity was in the form of a certificate of deposit or under a similar investment instrument.

Respondent Baro's Conversion of Money of Trinity Investors to His Personal Use

42. Respondent Baro took money from investor-consumers and then placed the money into a bank account he exclusively controlled. Respondent Baro used the money in his bank account to pay his personal expenses. He used that money for other things, such as to make a mortgage payment on the house occupied by his parents and to give money to his brothers and close associates.

Respondent Baro's False or Misleading Statements to Brokerage Companies

43. As set out in Factual Finding 28, Respondent Baro made numerous false and misleading statements to brokerage firms when he opened accounts to trade in commodities and stock market offerings.

Respondent Baro's Particularly Harmful Misrepresentations and Disposition toward Trinity Investors

44. Respondent Baro in his various relations and dealings with the aggrieved investor-consumers told lies, grossly exaggerated his skills, and vastly engaged in hyperbole regarding Trinity's scope of investment benefits. Respondent Baro harmed individual consumers in particular and discrete manners, including but not limited to the following:

Mr. Ed Post

45. After monthly interest payments became sporadic from Trinity to Mr. Post, he continuously sought to contact Respondent Baro. But, Respondent Baro offered an array of vacuous excuses and claims. Among other things, Respondent Baro falsely told Mr. Post that

commercial developers who had taken loan money from Trinity had defaulted and that Mr. Post would soon "own some good property." Respondent Baro also sought to allay Mr. Post with a false claim that a company in Chicago, Illinois, was going to buy Trinity and that all investors, including Mr. Post, would enjoy a return of 5:1. But, a sale of Trinity never materialized. Mr. Post wrote two or three letters that resulted in intermittent payment of monthly interest.

Before Mr. Post gave Trinity an additional $3,000 in June 2001, Respondent Baro represented that such an investment "would come back" to Mr. Post and his wife in two or three months at a profit of 50%.

Mr. Post compellingly declared that he would never have put his money into Trinity had he known that Respondent Baro had declared bankruptcy.

Respondent Baro gave Mr. Post checks that bounced due to insufficient funds in the Trinity bank account.

Mr. Post never heard or understood that Respondent Baro considered himself to be a speculator.

In order to make mortgage payments and other debts incurred due to dealings with Respondent Baro, Mr. Post had to take out a very high interest line of credit, which he continues to pay off.

Due to financial setbacks that he attributes to his relationship with Respondent Baro, Mr. Post had to return to the work force as a salesman for Lowe's hardware/home improvement store in Fresno. A lower extremity ailment that developed when he was a mailman is aggravated by walking and standing on the concrete floor of his new workplace.

Respondent Baro or Trinity have given Mr. Post an assurance that he has not lost his principal as invested in an amount of, at least, $82,648.85.

Mr. Steve Moe

46. In September 2001, Mr. Moe last received a monthly interest payment from Trinity. After receiving the last monthly interest payment, Mr. Moe and his wife attempted on numerous occasions to communicate with Respondent Baro, who was often unavailable. During 2001, Respondent Baro falsely told Mr. Moe that Trinity would "go public" so that capital would come into the business. On several other occasions, Respondent Baro falsely told Mr. Moe that Trinity would be purchased by another investment group.

Mr. Moe persuasively stated that he had he known Respondent Baro had filed bankruptcy in the past, Mr. Moe would not have become an investor in Trinity.

Respondent Baro misled Mr. Moe to believe that Trinity included accountants and lawyers because respondent often referred to such professionals as being integral to a "pending buy out" of Trinity.

Mr. Moe is anxious that he has lost principal investment amount of $30,000.

Due to apprehension of loss of money placed with Respondent Baro, Mr. Moe will not retire as he had earlier planned, but he will continue to work as a junior high school teacher for about two years more than scheduled.

Mr. Rastus Henderson

47. Mr. Henderson, who is a retired postal letter carrier, heard Respondent Baro give his assurance that the investment vehicle of Trinity was safe. Mr. Henderson had a 401K retirement plan with the United States Postal Service and life insurance money due to the death of his wife. Mr. Henderson confided with Respondent Baro that the money in his retirement plan and the life insurance proceeds was "all the money [Mr. Henderson] had in the world." Respondent Baro knew that Mr. Henderson has a dependent 14 year old daughter, who Mr. Henderson has a keen desire to attend college. Also around the time of their first meeting, Mr. Henderson told Respondent Baro of his plan to retire soon thereafter.

Respondent Baro adamantly told Mr. Henderson that Trinity invested in real estate that was nearly exclusively commercial in nature, but that Trinity also placed investment money in the stock market. Respondent Baro told Mr. Henderson that the worst case scenario regarding money invested in Trinity would be that Trinity investors would "own expensive real estate" upon a default by the developers who borrowed money from Trinity.

A short time following his placing money with Respondent Baro, Mr. Henderson began to experience worsened financial difficulties. Mr. Henderson sought return of the principal so as to avoid pending foreclosure on his residence. After Mr. Henderson informed Respondent Baro regarding the second mortgage on his residence that his late wife had secured before she died, Respondent Baro gave Mr. Henderson faulty financial advice. Mr. Henderson understood Respondent Baro to inform him that because his wife had secured the mortgage under her "maiden name" that Mr. Henderson had no responsibility to pay off the second mortgage. But six months later, Mr. Henderson received notice of a pending foreclosure action against his residence due to failure of payment on the second mortgage. In desperation, Mr. Henderson turned to Respondent Baro to withdraw $20,000 from the $70,000 principal investment in Trinity. But, Respondent Baro told Mr. Henderson that he had an alternative financial plan.

In December 2000, Mr. Henderson received $42,000 from Citifinancial. Mr. Henderson placed $20,000 in Trinity as an additional investment.

Respondent Baro promised Mr. Henderson that with the additional $20,000 investment in December 2000, Trinity would increase his monthly interest payment to $1,800.

Following the additional contribution in December 2000, the interest payments to Mr. Henderson became late and erratic.

In April 2001, Mr. Henderson received his last interest payment from Trinity.

In April 2001, Mr. Henderson traveled to the residence of Respondent Baro to demand, at least, $20,000 in principal for Trinity. Respondent Baro gave Mr. Henderson two separate checks in the amount of $10,000, but Respondent Baro advised Mr. Henderson to wait until a certain date to deposit the checks. Mr. Henderson waited until the date specified before depositing the checks; but, both checks bounced due to insufficient funds in the Trinity bank account.

Mr. Henderson compellingly stated that had Respondent Baro told him that he had entered into bankruptcy protection, Mr. Henderson would never have placed money with Trinity.

After Mr. Henderson complained to the Fresno Better Business Bureau, Respondent Baro wrote a letter that distorted Mr. Henderson's investment with Trinity. The letter falsely portrayed Mr. Henderson as an ill informed disgruntled client who supposedly made bogus claims against Trinity. When the Better Business Bureau offered a mediator to resolve the dispute, Respondent Baro refused to attend the mediation meeting.

Ms Tanji

48. During his solicitation of Ms Tanji, Respondent Baro represented that he operated an expansive business operation, which had offices in Fresno and Merced. Respondent Baro told Ms Tanji that he had had investments in Chicago and New York.

At a point when Ms Tanji grew apprehensive about her principal investment in Trinity, she asked Respondent to rescind the contract and to return the principal to her. Respondent Baro attempted to sooth her fears by telling her that her investment would triple when an interested buyer acquired Trinity. But, after months of asking for assurances, Respondent falsely stated to Ms Tanji that the reason for the inability of Trinity to make timely interest payment was due to him having been "double crossed" by a partner.

After the interest payments from Trinity ceased coming to her, Ms Tanji had to sell 20 acres of her farm. She also refinanced her property again.

Ms Tanji has been disturbed that Respondent Baro had confidential records that she had filed with Wells Fargo at a time when she procured a loan from that bank before 1995.

Ms Tanji's experience with Respondent Baro and Trinity has imposed significant hardships on her. At age 66 years, she must continue to work as a nurse. In the new tax year of

2005, she plans to sell another 20 acres of her farm to resolve debts, which are partially due to Respondent Baro's acts and omissions as a financial adviser and investment coordinator.

Ms Tafoya

49. Ms Tafoya has a diagnosis of mild dementia. When Respondent Baro dealt with her he noticed her forgetfulness and mentioned his observations to Ms Tanji, who employed Ms Tafoya as a housekeeper. Nevertheless, Respondent Baro took money from Ms Tafoya for placement in Trinity.

When Ms Tafoya questioned Respondent Baro about his unavailability to take her telephone calls about the untimely interest payment, he falsely told her that he had business trips to places such as Chicago in order to enhance Trinity. He never made such business trips.

Ms Tafoya, who is a 65-year-old housekeeper, is very concerned with the potential loss of $25,000 to the unethical dealings of Respondent Baro.

Mrs. Hughes

50. Before entering Respondent Baro's investment arrangement with Trinity, Mrs. Hughes had a retirement account with her hospital employer that amounted to $9,448.48. Although she sustained early withdrawal penalization, Mrs. Hughes liquidated the retirement account so as to invest the proceeds in Trinity. Respondent Baro advised Mrs. Hughes to close the retirement plan because Trinity would provide her with a much greater rate of interest, that is, 25% per annum. His advice was bogus and detrimental to Mrs. Hughes.

When Mrs. Hughes met Respondent Baro, she told him that due to her health problems she had to stop work at Mercy Hospital. She periodically worked as a traveling nurse so as to gain flexibility and to limit hours she had to work during a week. Mrs. Hughes expressed reluctance with Respondent Baro that it might not be wise for her to go into any risky investment due to her particular circumstances. But, Respondent Baro promised her a significant monthly interest payment and assured her that the principal investment amount would be safe.

Although she received monthly interest payments through 1999, in the year 2000 she did not receive interest payments until October. For the months of October and November 2000, Mrs. Hughes received interest payments of $1,756. He gave many excuses, which included a claim that his wife had deposited money into the wrong account, and that Trinity's books were being audited in New York. Also, Respondent Baro frequently told Mrs. Hughes to be patient because Trinity was to merge with another company so that existing investors would be rewarded with great returns.

When her health precluded her from actively engaging in nursing, Mrs. Hughes attended school to become a massage therapist. At the school, Mrs. Hughes met a man named "Andy," who claimed he was a good friend of Respondent Baro, but who said that he would never put any money with Respondent Baro. Andy also told Mrs. Hughes that Respondent Baro did not travel to Chicago or New York on business as he had told Mrs. Hughes.

Mrs. Hughes had to take out another loan to cover past debt from the loan that she had secured in order to secure part of the money she had "invested" in Trinity.

Since entering the transaction with Respondent Baro, Mrs. Hughes has become disabled from significant gainful employment as a registered nurse.

Respondent Baro has given Mrs. Hughes no assurance that she will ever recover the principal of $30,000 she and her husband invested in Trinity.

Mr. Taniguchi

51. When Mr. Taniguchi met Respondent Baro, the former was employed as a clerk in a video store. Although he now runs a delivery service for telephone directories, he is not an astute, experienced investor or businessperson.

Upon meeting Respondent Baro in late September 1999, when a stock market collapse was evident, Mr. Taniguchi explicitly told Respondent Baro that he did not wish to have his money put into stocks.

In September 1999, on the assurances and promises made by Respondent Baro, Mr. Taniguchi liquidated his 401K retirement plan to place $56,000 into respondent's possession through Trinity. Mr. Taniguchi informed Respondent Baro that 401K savings was the extent of all his savings.

In July 2001, Mr. Taniguchi implored Respondent Baro for rescission of the investment contract with Trinity. Respondent Baro made hyperbolic claims to Mr. Taniguchi that the consumer would received five to ten times his original investment upon renewal of his investment contract with Trinity.

When Trinity failed to pay interest payments and he could not recover the investment of $56,000, Mr. Taniguchi hired a law firm in early 2002 to help him pursue Respondent Baro. Mr. Taniguchi incurred attorneys' fees in addition to suffering with the potential loss of the money he placed in Trinity through Respondent Baro.

Mr. and Mrs. Mora

52. When Mr. and Mrs. Mora completed Trinity's contract (personal new account information form), the document showed on two places the consumers' initial investment in an

amount of $8,768.25. The initial investment came from proceeds of refinancing with a company called The Associates, which had escrow company records to show that $9,268.26 was deposited directly into Trinity's account on behalf of the Moras. When Mr. and Mrs. Mora asked Respondent Baro about the discrepancy of $500.01, respondent said that he had to pay the couple's debt on their rental property. But, Respondent Baro had no document to verify his assertion. Neither Respondent Baro nor Trinity ever provided Mr. and Mrs. Mora with bank or accounting reconciliation documents in support of the shortfall of $500.01 that opened the couple's investment with Trinity.

During dealings with Trinity, Mr. and Mrs. Mora experienced receipt of worthless checks from Trinity that bounced.

Respondent issued Mrs. Mora and her husband IRS 1099 forms for the years 2000 and 2001. Respondent Baro, through Trinity, sent Mr. and Mrs. Mora a 1099 form for the tax year 2000 that showed interest payment to the couple in the amount of $1,313.30. However, the couple calculated the gross interest payment amounted to $1,130. Respondent Baro never showed Mr. and Mrs. Mora that their arithmetic was erroneous. Respondent Baro was adamant that the 1099 forms were correct notwithstanding the complaints by Mrs. Mora and her husband.

On the first instance Mrs. Mora complained to Respondent Baro of a late interest payment, he told Mrs. Mora that the "front office" in Chicago had made a mistake with the interest payment then due the Moras. A few months later a direct deposit check from Trinity "bounced." Respondent Baro caused a second check to be sent to the Moras, but it also was returned due to insufficient funds in Trinity's account.

When interest payments became inconsistent, Respondent Baro expressed many different excuses. After August 2001, Respondent Baro refused to return telephone calls made by Mrs. Mora and her husband.

Mr. and Mrs. Mora are troubled by the prospect of losing nearly $13,000 that they placed with Respondent Baro.

Mr. and Mrs. Tolmosoff

53. Respondent Baro led Mr. and Mrs. Tolmosoff to believe that the couple's obligation to invest in Trinity would not need to exceed $14,000. Respondent Baro presented Mr. and Mrs. Tolmosoff with a contract that showed their investment at $14,000. When Mr. Tolmosoff's retirement plan required about 15 business day to liquidate his retirement (SEP) plan, Respondent hurried the consumer with a false pitch that if Mr. Tolmosoff took out a bank loan for half the amount of the initial investment and placed that money in Trinity that when the SEP liquidation proceeds reached Trinity, Respondent Baro would return $7,000 to Mr. Tolmosoff. Respondent Baro was deceitful in that Trinity never returned $7,000 to the couple.

In the summer of 2001, Mrs. Tolmosoff asked Respondent Baro: "Will our money be invested in the stock market?" Mrs. Tolmosoff adamantly impressed on Respondent Baro that the couple did not want their money in the stock market. Respondent Baro promised the couple that any investment money from them would not go into the stock market.

Although Mrs. Tolmosoff requested Respondent Baro to produce a copy of a signed contract with Trinity, Respondent Baro never delivered the document to the couple.

After the time of investment, the couple received interest payments for a few months. But, the payment never arrived on a set or consistent day in the month. When the interest payment became sporadic, Mrs. Tolmosoff prompted her husband to telephone Respondent Baro. Respondent Baro informed the couple that their money was tied up in real estate projects.

In time Trinity's monthly interest payments stopped.

After the September 11, 2001, terrorists' attack on America, Mr. Tolmosoff telephoned Respondent Baro to inquire whether or not the attack would impact the couple's investment in Trinity. Respondent told Mr. Tolmosoff "not to worry, your money is in real estate." After September 11, 2001, Respondent Baro gave Mr. and Mrs. Tolmosoff an array of excuses for Trinity's inability to pay monthly interest to the couple. Eventually, Respondent Baro failed to return telephone calls to the couple.

Mrs. Tolmosoff and her husband have sustained hardships due to dealings with Respondent Baro and Trinity. They are paying interest on the $7,000 line of credit taken out to secure the investment with Trinity. The loss of more than $21,000 by the couple is a dire development for Mr. and Mrs. Tolmosoff.

Respondent Baro's Operation of Trinity as a Ponzi Scheme

54. Securities Enforcement Division Examiner Mr. Robertson established that Respondent Baro's patterns of use of Trinity in connection with Respondent Baro's activities with Bank of America account numbers and the brokerage accounts constituted as a "Ponzi" scheme. Respondent Baro, through Trinity, used money placed by new investors to pay earlier investors, while Respondent Baro, by way of Trinity, gave a false impression, or created an artifice, that payments to the earlier investors resulted from profitable business operations or actual investment activity.

55. Respondent Baro's use of Trinity falls within the contours of a Ponzi investment scheme. A "Ponzi" scheme manifests when: (i) the promoter solicits initial investors with promises of tremendous financial return; (ii) the investors place money with the promoter for a supposed business, which is a worthless artifice or undercapitalized scheme; (iii) for a limited period of time, newly recruited investors' monies are used to pay supposed returns to the initial investors; (iv) the initial investors, who receive supposed

investment returns, become enthusiastic advocates of an investment opportunity and then inform others of the promoter's offerings; and (v) the promoter determines a point to disband the scheme and absconds with monies of the investors.

Respondent Baro's Ponzi scheme included not only Trinity misappropriating money of "fooled" investors, but also the scheme caused the aggrieved investor-consumers to pay unnecessary taxes. Trinity issued bogus 1099 forms which supposedly indicated interest payments. But, the aggrieved consumers paid taxes not on earned interest, but rather on their own money, or on the monies placed with Trinity, by other consumers. (And, Respondent Baro made admissions at the hearing the he paid no taxes, and that he did not file tax returns for Trinity for several tax years.)

Respondent Baro's Use of Aggrieved Consumer-Investors' Money for Personal Use and Enjoyment

56. Senior Corporations Examiner Mr. Robertson established that Respondent Baro used Trinity's bank account as his personal checking account.

Respondent Baro used the money of aggrieved investors that they had placed in Trinity for personal expenses. He wrote checks from the Bank of America checking account to make purchases at Liquor Max, County Home Video, Bennigan's Grill & Tavern, DMV, Instant Replay Sports, Cigarettes Cheaper, European Café, Herwaldt Motors, General Nutrition, Hancock Fabrics, Kam Pai Restaurant, Toys R Us, Borders Books & Music, Dicicco's Restaurant, Linenback Auto Parts, Olive Garden, Clearwater Pool & Spa, Chevron, Viking Insurance Co., Target, Daves RV Center, Quality Cut, Longs, Sears, Marshalls, Sendai Sushi, and for cash withdrawals that he applied for his use or benefit.

Matters that Suggest Lack of Rehabilitation of Respondent Baro

57. Respondent Baro called no witness to the hearing to offer evidence regarding his character or reputation for integrity, honesty, fair dealings or good faith business practices.

58. At the hearing, Respondent Baro expressed no remorse, sorrow or regret[6] for hardships that have been inflicted upon all the aggrieved consumer-investors.

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[6] "[M]ost Ponzi perpetrators are persuasive, and have few scruples. [Typical Ponzi schemers] usually aren't particularly smart. They have an insouciant smirkiness and jokey attitude that makes them convincing before the crash, and helps perpetuate investor denial after the crash. They often have a prior or subsequent involvement with fraudulent schemes. They have a fatalistic sense of inadequacy that makes stealing more natural than earning...." Cabot Christianson, "Bankruptcy Brief: You Can't Cheat an Honest Man: Everything You Want to Know About Ponzi Schemes," 23 *The Alaska Bar Journal, the Alaska Bar Rag*, January / February, 1999, pp. 23-24. The law journal article provides a review of a book titled: *You Can't Cheat an Honest Man*, by James Walsh (Silver Lake Publishing). The book was described as providing an entertaining and informative overview of Ponzi schemes that helps put an Alaska scheme in perspective.

Respondent Baro's Defenses Lack Merit or Credibility

59. Respondent advanced a series of defenses that include: (i) the Department of Corporations lacks jurisdiction due to the inapplicability of Corporations Code section 25007 to Respondent Baro or Trinity; (ii) Respondent was never a broker within the meaning of the California Securities Law; (iii) Trinity was a home based start up company that engaged in the business of speculation, which is outside the scope of regulation by the Department; (iv) the consumers were sophisticated investors who assumed the risks of investment; (v) the money delivered to Trinity by the aggrieved consumers were private party loans, which are not subject to regulation by the Department; (vi) the offerings made by him were not subject to regulation; and (vii) the investor-consumers were in collusion to offer false testimony at the hearing of this matter in order to impugn his integrity.

Respondent Baro did not establish any factual basis upon which to prove any of his alleged affirmative defenses.

60. Respondent Baro was not a credible witness. He made countless contradictions and misrepresentations throughout the course of the hearing. Respondent Baro was so evasive and unduly resistant during cross-examination so as to suggest a pattern of deception and a disposition towards untruthfulness and deceit. His non-credible attitude towards the proceeding manifested in his demeanor that included: his hearing room attire of skin tight tank tops and a cavalierly worn baseball-type hat with sun glasses propped on the hat's brim. He reflected the demeanor of person prone to disregard traditional conventions of behavior, proper manners and empathic concern for others. He showed undue hostility and disdain toward Complainant's counsel regarding the adjudication of this matter. Respondent Baro contemptuously failed to observe the discovery requirements under the Government Code section 11507.6, and he refused to timely produce documents as sought by subpoena as served on him by Complainant's counsel.

Ultimate Findings

61. Respondent Baro, through Trinity, offered to investor-consumers a three-page personal new account information form. Respondent designated the form as a "prospectus." The three-page personal new account information form represented a security within the meaning of the Corporate Securities Law of 1968.

62. Respondent Baro did not take personal notes or loans from the aggrieved investor-consumers. The aggrieved investor-consumers made investments in securities offered and sold by Respondent Baro, through Trinity.

Respondent Baro, who had been employed by various banks, understood the requisite aspects of loan documentation (application, financial statements, tax returns, evidence of income and ability to repay the amount borrowed, etc.) and procedure (obtaining credit reports, appraisals, etc,) in perfecting loans. But, Respondent Baro made admissions at the hearing of this matter that he did not present the aggrieved investor-consumers, as creditors, with documentation, nor did Respondent Baro follow loan procedure.

63. Respondent Baro did not qualify, within the meaning of Corporations Code section 25163, either the offer or sale of the investment contracts with the aggrieved investor-consumers to gain an exemption to the Corporate Securities Law of 1968.

64. Respondent Baro made numerous misrepresentations, and on several occasions he omitted material facts, in order to appropriate money from aggrieved investor-consumers.

65. Respondent Baro unlawfully engaged in activities of an unlicensed investment adviser.

66. Respondent Baro unlawfully engaged in activities of an unlicensed broker-dealer.

Restitution as Ancillary Relief

67. Respondent Baro used Trinity to unlawfully collect money from the aggrieved investor-consumers. Ancillary relief under the Petition requires Respondent Baro to make restitution to the aggrieved investor-consumers as follows:

Mr. & Mrs. Ed Post	$82,648.85
Mr. & Mrs. Steve Moe	$30,000.00
Rastus Henderson	$90,502.67
Kazuaka Tanji	$80,825.00
Margaret Tafoya	$25,000.00
Amy Hughes	$20,537.05
Diana/Chon Mora	$12,268.25
Brian Taniguchi	$56,046.86
Sasanna/Jack Tolmosoff	$21,244.11

Costs Recovery on behalf of the Corporations Commissioner

68. Complainant requested an order that grants the Commissioner recovery of costs regarding the instant administrative adjudication against Respondent Baro.

Complainant's counsel persuasively advanced that the following time and resultant costs were incurred in connection with the investigation and prosecution of the complaints of

aggrieved consumers that led to the Complainant's Desist and Refrain Order against Respondent Baro and Trinity:

Costs of Investigative Services

Public Employee	*Hours Expended*	*Hourly Rate*[7]	*Total*
Investigator Susan Thadani	479 hours	$50.00	$23,950.00
Investigator Bill Montgomery	17 hours	$50.00	$850.00
Examiner Jeff Robertson	627 hours	$101.36	$63,552.72

Cost of Prosecution

Counsel Joan Kerst	212 hours	$111.51	$23,640.12

Related Expenses

Deposition transcript fees, subpoena service, express and certified mail, long distance telephone calls, photocopy costs, hearing binders	$1,300.00
Witness Per Diem Fees and Travel expenses	$919.00
Grand Total of Costs:	$114,211.84

69. Under due process considerations, no allowance for cost recovery is granted for the value of the time of administrative law judges of the Office of Administrative Hearings. Such recovery of costs associated with the time of adjudicators may be viewed as adversely impacting upon Respondent Baro's exercises of his right to a full, fair and impartial adjudication proceeding.

70. Respondent Baro provided no competent evidence to refute that Complainant's costs of investigation and prosecution are reasonable in an amount of $114,212.

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[7] At "deadline" date to file a final responsive brief, Complainant's counsel did not have the actual rate per hour that is billable by investigators. But, official notice (Government Code section 11515) may be taken that the hourly rate for Enforcement Representative for the California Department of Consumer Affairs for the fiscal year 2003-2004 was at $58.27. Accordingly, a reasonable rate for investigators of the Department of Corporations may be calculated as being not less than $50.00 per hour.

LEGAL CONCLUSIONS

1. The California Corporate Securities Law (Corp. Code, § 25000 et. seq.) has as its paramount purpose the protection of the public against unlawful activities of persons who may offer and sell investment securities. The law's objective is met by requiring the full disclosure of all information necessary for an investor to make informed and intelligent investment decisions. (*People ex rel. Bender v. Wind River Mining Project* (1990) 219 Cal.App.3d 1390, 1397-1399.)

In order to protect the public, the Legislature has placed the burden on the seller or promoter of securities to know what the facts are with regard to the securities offered and sold. *People v. Baumgart* (1990) 218 Cal.App.3d 1207, 1220, explains:

> As the cases emphasize, the main objective of the securities law is to protect the public against the imposition of insubstantial, unlawful and fraudulent stock and investment schemes and to promote full disclosure of all information that is necessary to make informed and intelligent investment decisions.

2. The term "security" as defined in Corporations Code section 25019 includes a variety of investment arrangements; but, embraces most situations where an investor places money with another person with the expectation by the investor that the other person will return the money with a profit. The term "security" is defined broadly in order to "protect the public against spurious schemes, however ingeniously devised, to attract risk capital." *Silver Hills County Club v. Sobieski* (1961) 55 Cal.2d. 811, 814. The purpose of the securities law "is to afford those who risk their capital at least a fair chance of realizing their objectives." (*Id.* at page 815.)

"Investment contracts" are within the definition of securities as set out in Corporations Code section 25019. California courts have applied "two separate and distinct tests" in determining whether a given investment contract constitutes a security. (*People v. Wind River Mining Project, supra*, 219 Cal.App.3d at 1399.) Those tests are the federal or *Howey* test as formulated under federal law in *S.E.C. v. W.J. Howey Co.* (1946) 328 U.S. 293, and the "risk capital" test as applied by the California Supreme Court in *Silver Hills County Club v. Sobieski, supra*, 55 Cal. 2d 811. If an investment contract, including a note, satisfies either test, it is a security. (*People v. Schock* (1984) 152 Cal.App. 3d 379, 387-389.)

The California Corporate Securities Law of 1968 elevates substance over form. The statutory provisions are patterned after the federal Securities Act of 1933 (15 U.S.C., § 77b). Federal court decisions that interpret the federal Securities Act may be used to define the meaning of "security" under California law. (*People v. Schock, supra,* 152 Cal.App.3d at 387.)

S.E.C. v. W. J. Howey Co, supra, 328 U.S. 293 is the benchmark decision in securities law. Under Howey, an investment contract is a security when there is: (1) an investment of money; (2) into a common enterprise; (3) with an expectation of profit; and (4) to come solely from the efforts of others. (*S.E.C. v. Howey, supra,* 328 U.S. 298-299.)

The risk capital test is found in *Silver Hills County Club v. Sobieski, supra,* 55 Cal.2d 811. That decision involved a country club that raised money for improvements by selling memberships. (*Id.* at 812-813). In determining the memberships were securities, the California Supreme Court set forth the following factors, which are known as the risk capital test: (1) an attempt by an issuer to raise funds for a business venture or enterprise; (2) an indiscriminate offering to the public at large where the persons solicited are selected at random; (3) a passive position on the part of the investor; and (4) the conduct of the enterprise by the issuer with other people's money. (*Id.* at p. 815.)

Trinity as a Ponzi Scheme

3. Under factual findings 54 and 55, Respondent Baro carried out a classic Ponzi scheme by way of his operation of Trinity with regard to the aggrieved investor-consumers.

In 1924, the United States Supreme Court in *Cunningham, Trustee of Ponzi v. Brown* (1924) 265 U. S. 1, added to popular and legal lore the notion of the Ponzi scheme. Chief Justice William Howard Taft described the Ponzi particulars that nearly duplicates Respondent Baro's approach as:

> The [bankruptcy] litigation grows out of the remarkable criminal financial career of Charles [Carlo] Ponzi. In December, 1919, with a capital of $150, he began the business of borrowing money on his promissory notes. He did not profess to receive money for investment for account of the lender. He borrowed the money on his credit only. He spread the false tale that on his own account he was engaged in buying international postal coupons in foreign countries and selling them in other countries at 100 per cent, profit, and that this was made possible by the excessive differences in the rates of exchange following the war. He was willing, he said, to give others the opportunity to share with him this profit. By a written promise in ninety days to pay them $150 for every $100 loaned, he induced thousands to lend him. He stimulated their avidity by paying his ninety-day notes in full at the end of forty-five days, and by circulating the notice that he would pay any unmatured note presented in less than forty-five days at 100% of the loan. Within eight months he took in $9,582,000 for which he issued his notes for $14,374,000. He paid his agents a commission of 10 per cent. With the 50 per cent promised to lenders, every loan paid in full with the profit would cost him 60 per cent. He was always insolvent and became daily more so, the more his business

> succeeded. He made no investments of any kind, so that all the money he had at any time was solely the result of loans by his dupes. (265 U.S. at 8-9.)

A recent version of a Ponzi scheme is shown in the federal sentencing guideline case on federal prosecution described in *U.S. v Boula* (1991) 932 F2d 651. The arrangement in *Boula* involved:

> ...a massive mail fraud scheme that began in the late 1970s and early 1980s. Through their advertisements, free seminars, personalized investment counseling, and real estate tours, defendants induced investors to purchase interests in a series of limited real estate partnerships. Defendants informed investors that their money would be used to purchase property and to build improvements on the property. When the property sold, the investors would receive the principal investment plus interest. Unfortunately, these real estate plans did not function as promised. To raise money to pay existing investors, defendants created a pyramid or Ponzi scheme in which they attracted more investors, then diverted funds from the stated purposes and used the new investor money to pay interest to the old and new investors. From these criminal investment activities, defendants took between ten and twenty per cent of the unit prices in commissions and fees. Defendants' efforts in their Ponzi scheme resulted in $ 5.2 million in losses to investors.
> ...
>
> The defendants fraudulently acquired an additional $1.8 million through three income partnerships. They did not use the money for the purposes explained to investors, but instead used the investors' money to pay off demand notes to other investors and to pay operational costs.

In the instance of Respondent Baro, not only is a Ponzi scheme apparent, but also his actual intent to defraud the aggrieved investor-consumers can be discerned from the facts underpinning the Ponzi scheme associated with Trinity. An authority set out:

> The court-fashioned presumption that Ponzi scheme operators act with actual intent to defraud [involves] those situations where it is unmistakable that the debtor purposefully orchestrated a scheme which, by its very design, could only serve to defraud investors. The presumption would most clearly be applicable where: (1) [schemer's] investment program is connected to no legitimate business operation or to a business operation that is very small in relation to the amount of debt

> incurred; (2) [schemer] makes highly unrealistic promises to investors; and (3) [schemer's] becomes grossly overextended within a short period of time.... (Mark A. McDermott, "Ponzi Schemes and the Law of Fraudulent and Preferential Transfers," 72 *American Bankruptcy Law Journal*, Spring 1998, p. 157, 173-175.)

Trinity as Respondent Baro's Alter Ego

4. Respondent Baro exerts great effort in his arguments to show Trinity was a start-up business, which was in its operations separate from his individual obligations. But, Complainant makes a compelling argument that the alter ego doctrine vitiates all of Respondent Baro's assertions.

Under the alter ego doctrine, a separateness from ownership of a distinct business entity, such as the corporate form or other business structures, including a sole proprietorship, may be disregarded when justice and equity can best be accomplished as well as fraud and unfairness defeated. (*Mid-Century Insurance Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212.) The alter ego doctrine applies to limited liability companies (Corp. Code § 17101), and by analogy the doctrine applies to a business entity structured as a sole proprietorship.

No litmus test exists to determine the point that the separateness from ownership of a business entity must be disregarded; but, two general requirements control: (i) that there be such unity of interest and ownership that the separate personalities of the business and the individual owner no longer exist; and, (ii) that, if the acts are treated as the conduct of the business alone, an inequitable result will follow. (*Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 000.)

Relevant considerations to the analysis of the alter ego doctrine include: commingling of funds or other assets; failure to segregate funds of the individual and the business operations; treatment by an individual owner of business assets as the individual's own property; ownership of all the business by a single individual or close knit group; domination or control of the business by the owner; use of a single address for the individual and the business operations; disregard of formalities; and failure to maintain arm's-length transactions between the owner and the business entity. (*Mid-Century Ins. Co. v. Gardner*, *supra*, 9 Cal.App.4th at 1213, fn. 3.)

In this matter, Trinity is the alter ego of Respondent Baro. He created Trinity, and at all times he completely owned, operated, managed, dominated and controlled Trinity. At all times relevant to the existence and operation of Trinity, a unity of interest and ownership between Respondent Baro and Trinity's operations show that no distinction and separateness existed. Although Respondent Baro represented to the aggrieved consumers that he had business partners and that other persons were responsible for the consumers not receiving

timely monthly interest payments, Respondent Baro was the only person connected with creating, executing and performing under Trinity's documents and contracts.

Except for money that aggrieved consumers presented to Respondent Baro, Trinity had no assets.

Creation of the business name, stationery and "contract," also show Trinity to be a fiction, or misleading device. Respondent Baro selected as part of Trinity's business name the words "investment group" or "investments." Respondent Baro never used on business cards or stationery, terms such as "start-up," "home based business," "speculator," "speculations." A reasonable inference may be drawn that had Respondent Baro disclosed to any of the aggrieved consumers, as he now claims, that Trinity was "a home based start-up company in the business of speculation," he would not have received $4,000, let alone $400,000, that he procured from the aggrieved consumers.

Each set of investor-consumers consistently offered evidence at the hearing of this matter that, had any one of them known Respondent had filed for bankruptcy, no one would have trusted Respondent Baro to invest money through Trinity.

Respondent Baro did not maintain proper accounting records or books so as to clearly show his compliance with various legal requirements. Respondent Baro never filed tax returns that showed Trinity's operations or his gain from the "sole proprietorship" in Trinity. But, Respondent Baro obtained an "employer tax identification number" (EIN) for use in establishing accounts with brokerage firms. And, Respondent Baro consistently provided false, inaccurate 1099 tax report forms to the aggrieved consumers.

Respondent Baro commingled funds among bank and brokerage accounts that he owned and controlled. But, Respondent Baro maintained the accounts in his name with the use of a bogus employer tax identification number as to avoid regulatory restrictions. Respondent Baro concealed from the brokerage firms the actual source of money. Respondent Baro intermingled money of the aggrieved consumers and he transferred monies from one consumer in order to pay interest to another investor-consumer. And, Respondent Baro designated monthly payments to aggrieved consumers, but he never produced for Complainant's discovery, or for the hearing, any tax forms or financial statements that reflected Trinity's business "interest expense."

All of the aggrieved consumers made, or caused financial institutions to make, checks and cashier's checks for infusion of investment money payable to Trinity, or variants of that name. None of the consumer-investors made checks payable personally to Respondent Baro for his "use and enjoyment," as he avers.

For all the reasons set out in the Factual Findings, above, and this Legal Conclusion, the alter ego doctrine applies to reveal Trinity as a shell, conduit and instrumentality through which Respondent Baro unlawfully obtained money to use for his own benefit. Respondent Baro created and used Trinity to assist and aid him in perpetrating fraud upon the aggrieved

consumers. Any adherence to the fiction of an existing bona fide sole proprietorship of Trinity as a business entity, distinct from Respondent Baro, would promote injustice and would sanction fraud.

Four Violations of the California Corporate Securities Law by Respondent Baro and Trinity

I. Violation of Corporation Code section 25110 – Unqualified Offer and Sales of Securities

5. Corporation Code section 25110 sets out the qualification required for a person to sell any security as follows:

> It is unlawful for any person to offer or sell in this state any security in an issuer transaction (other than in a transaction subject to Section 25120), whether or not by or through underwriters, unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part. The offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with either a material term or material condition of qualification of the offering as set forth in the permit or qualification order, or a material representation as to the manner of offering which is set forth in the application for qualification, shall be an unqualified offer or sale.

Respondent Baro failed to offer proof that he met the requirements of Corporation Code section 25110.

Respondent's Offerings as Securities.

6. Corporation Code section 25019 defines security, in relevant part, as follows:

> 'Security' means any note,...debenture, *evidence of indebtedness, ...investment contract ...*or, in general, any interest or instrument commonly known as a 'security;' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of ... any of the foregoing. *All of the foregoing are securities whether or not evidenced by a written document.* (Emphasis added.)

The term "security" as defined in Corporations Code section 25019 includes a variety of investments whereby an investor gives money to another with the expectation that the other person will return the money with a profit. (*S.E.C. v. W.J. Howey Co., supra*, 328 U.S. 293.)

"Investment contracts," "notes," and "evidences of indebtedness" are all identified as instruments that constitute securities. (Corp. Code, § 25019)

Respondent Baro's three-page "personal new account information" form that each aggrieved consumer, or set of consumers, received was an "investment contract." (Corp. Code, § 25019.) Had Respondent Baro not presented the consumers with Trinity's contract, but only taken checks or wire transfers from the consumers, investment contracts would still have existed. No legal requirement dictates that a security be memorialized in writing because Corporations Code section 25019, in part, states "All of the foregoing are securities whether or not evidenced by a written document."

Respondent Baro's paramount argument is that each investment agreement with an aggrieved consumer was a "personal note or loan." But, in the writings crafted by Respondent Baro, the parties agreed to use of words "invest" or "investment" multiple times during the course of consummating each transaction. Trinity's contract does not reflect words "loan," "note," or "IOU." Respondent Baro selected the word "investment" when he prepared the personal new account information form. Respondent Baro, for Trinity, never entered into a loan oriented relationship with the aggrieved consumers.

But, even if the agreements between Respondent Baro and the aggrieved consumers were characterized as "loans," the arrangement would remain a security. A bone fide loan transaction involves "notes" or "evidence of indebtedness." Both concepts are within the definition of "security." (Corp. Code, § 25019.) The federal test for "notes" as set forth in *Reves v. Ernst & Young* (1990) 494 U.S. 56, 58-63, begins with a presumption that every note is a security. The presumption is rebutted only by showing that the note "falls into certain judicially created categories... that obviously are not securities or bears a 'family resemblance' to notes in these categories." (*S.E.C. v. R.G. Reynolds* (9th Cir., 1991) 952 F.2d 1125, 1131; *Reves v Ernst & Young, supra*, 494 U.S., pp. 63-65.) The notes or personal new account information forms bear no resemblance to the categories set out in *Reves*.

Moreover, California courts have long recognized promissory notes as securities. (*People v. Leach* (1930) 106 Cal.App. 442, 448-450.) Also, in *People v. Walberg* (1968) 263 Cal.App.2d 286, 288-295, unsecured, interest-bearing promissory notes issued for loans were held to be "securities." Further, interests in promissory notes also have been upheld as "securities" under both the federal investment contract test (*People v. Schock, supra,* 152 Cal.App.3d at 385-389), and the "risk capital test." (*People v. Miller* (1987) 192 Cal. App.3d 1505, 1510-1511.) And, in *People v. Simon* (1995) 9 Cal.4th 493, the California Supreme Court provided clarification concerning "notes," by stating that unsecured promissory notes are securities when "the investor relies on the skill, services, solvency, success and services [sic] of the issuer to ensure payment." (*Id.* at p. 497, fn. 4.)

Exemption

Corporation Code section 25163 provides: "[i]n any proceeding under this law, the burden of proving an exemption or exception from a definition is upon the person claiming it." Respondent Baro did not qualify either the offer or sale of the investment contracts or what he called notes. Pursuant to Corporation Code section 25163, Respondent Baro and Trinity did not meet the burden of proof to establish an exemption.

The Commissioner never qualified the form of investment contracts offered and sold by Respondent Baro.

Cause exists to sustain the Desist and Refrain Order as Respondent Baro's offer and sale of the investment contracts or promissory notes to the aggrieved investor-consumers violated California Corporations Code section 25110.

II. Violation of Corporation Code Section 25401 - Respondent Baro's Misrepresentations and Omissions of Material Fact

7. Corporation Code section 25401 establishes "It is unlawful for any person to offer or sell a security in this state or buy or offer a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading."

Respondent Baro, through Trinity, made oral and written misrepresentations of material fact in connection with the offer or sale of securities to the aggrieved consumers, who invested money in Trinity. Respondent Baro's misrepresentations included that claims that consumers' respective principal investment was not at risk and that the money would earn interest at 25% per annum. Respondent Baro omitted material facts in connection with the offer and sale of securities to the aggrieved consumers. The misrepresentations included:

- Claims that investors' money would be used to place loans with commercial real estate developers;
- Trinity Group consisted of many investors, including individuals in Chicago, New York and Los Angeles;
- Respondent Baro managed millions of dollars and had many professional as clients;
- Respondent Baro invested ten of thousands of dollars of his own money in Trinity;
- Respondent Baro never disclosed to his investors that the investors' investment money was a personal loan to Respondent Baro, and that he would use the investors' money for his personal use;

- Respondent Baro did not disclose to the aggrieved investor-consumers that their money would be used to trade on brokerage firm accounts, which included the volatile stock market.

Cause exists to sustain the Desist and Refrain Order as Respondent Baro's offer and sale of the investment contracts or promissory notes to the aggrieved consumers by means of written or oral communication included untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. Such acts and omissions by Respondent Baro violated California Corporation Code section 25401.

III. Violation of Corporation Code section 25230 - Respondent Baro's Unlicensed Investment Adviser Activities

8. Corporation Code section 25230 sets forth:

> Certificate required
>
> (a) It is unlawful for any investment adviser to conduct business as an investment adviser in this state unless the investment adviser has first applied for and secured from the commissioner a certificate, then in effect, authorizing the investment adviser to do so or unless the investment adviser is exempted by the provisions of Chapter 1 (commencing with Section 25200) of this part or unless the investment adviser is subject to Section 25230.1.

Cause exists to sustain the Desist and Refrain Order as Respondent Baro conducted business as an investment adviser in the State of California without first obtaining a certificate from the Commissioner of the Department of Corporations. Such acts and omissions by Respondent Baro violated California Corporation Code section 25230.

IV. Violation of Corporation Code section 25210 – Respondent Baro's Unlicensed Broker-Dealer Activities

9. Corporation Code section 25210, subdivision (a), prohibits a "broker-dealer" from effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security unless the broker-dealer has first secured from the Commissioner a certificate that authorizes the person to act as a broker-dealer.

Corporations Code section 25004 defines "broker-dealer" as "any person engaged in the business of effecting transactions in securities in [the State of California] for the account of others."

The California Supreme Court has held that "where the services have been deemed within those defined by the act ... a single transaction could not be legally conducted without first obtaining the required permit." (*Owen v. Off* (1951) 36 Cal. 2d, 751, 756.)

Cause exists to sustain the Desist and Refrain Order as Respondent Baro conducted business as a broker-dealer in the State of California without first obtaining a certificate from the Commissioner of the Department of Corporations. Such acts and omissions by Respondent Baro violated California Corporation Code section 25210, subdivision (a).

Complainant's Request for Ancillary Relief Pursuant to Corporation Code section 25254

10. Corporations Code section 25254, subdivision (a), provides:

> If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

Ancillary relief on behalf of persons injured by Respondent Baro consists of restitution by Respondent Baro to the aggrieved investor-consumers as set out in Factual Finding 67.

Just and proper restitution must include accrual of interest, at the statutory rate established for civil judgments, upon the principal amount that accrues, at least, from the date of the Desist and Refrain Order of May 1, 2003.

Complainant's Request for Costs Pursuant to Corporation Code section 25254

11. Corporations Code section 25254, subdivision (b), establishes:

> In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

The costs of investigation and prosecution of this matter as set out in Factual Findings 68 and 70 are reasonable in an amount of $114,212.

ORDER

1. The California Corporations Commissioner's Desist and Refrain Order, dated May 1, 2002, against Respondent Goldbert Constenoble Baro[8], doing business as Trinity Investment Group, Trinity Investments, Trinity Group, Trinity, and T.I.G., is affirmed.

2. Within thirty days of the effective date of the Decision in this matter, Respondent Goldbert Constenoble Baro shall make ancillary relief on behalf of persons injured by his acts and omissions in the way of restitution as follows:

Mr. & Mrs. Ed Post	$82,648.85
Mr. & Mrs. Steve Moe	$30,000.00
Rastus Henderson	$90,502.67
Kazuaka Tanji	$80,825.00
Margaret Tafoya	$25,000.00
Amy Hughes	$20,537.05
Diana/Chon Mora	$12,268.25
Brian Taniguchi	$56,046.86
Sasanna/Jack Tolmosoff	$21,244.11

Interest as payable by Respondent Baro at the statutory rate of ten per cent per annum shall accrue from either the date of the Order to Desist and Refrain, or from the effective date of this decision, as the Commissioner deems appropriate.

3. Within thirty days following the effective date of this decision, Respondent Goldbert Constenoble Baro shall pay the full measure of the costs of investigation and prosecution, as well as the related expenses, in the amount of $114,212.

DATED: October 29, 2004

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

[8] Respondent Goldbert Constenoble Baro has also being known as Cecilio Baro, Cecil Baro and Bert Baro.