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SUPERIOR COURT OF CALIFORNIA
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FILED
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COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
JUL 11 2006
ALAN SLATER, Clerk of the Court
BY: M. SAMELA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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| THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER,<br><br>Plaintiff,<br><br>vs.<br><br>STEVEN ARTHUR SCOTT, an individual, and doing business as BENCHMARK FINANCIAL SERVICES,<br><br>Defendants. | Case No.: 06CC07158<br><br>**FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF; CIVIL PENALTIES; AND ANCILLARY RELIEF**<br><br>**VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25230 (UNLICENSED INVESTMENT ADVISER)**<br><br>**VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25235 (FRAUD BY AN INVESTMENT ADVISER)**<br><br>**JUDGE GAIL A. ANDLER**<br>**DEPT. C4** |

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through Preston DuFauchard, California Corporations Commissioner, acting to protect the public from unlicensed and unlawful investment advisers, brings this action in the public interest and alleges as follows:

## VENUE AND JURISDICTION

1. The California Corporations Commissioner ("Commissioner") brings this action to enjoin the defendants from violating the Corporate Securities Law of 1968 (California Corporations Code section 25000, et seq.) and to request necessary civil penalties and ancillary relief.



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2. The Commissioner brings this action pursuant to California Corporations Code sections 25530, 25535 and Government Code section 11180 et seq., in his capacity as head of the California Department of Corporations ("Department").

3. The Defendants, Steven Arthur Scott, an individual, and doing business as Benchmark Financial Services, have transacted and continue to transact business within Orange County, California, and throughout the state. The violations of law described herein have occurred and will continue to occur within Orange County, California, and throughout the state unless enjoined.

## DEFENDANTS

4. Steven Arthur Scott, an individual ("Scott"), and doing business as Benchmark Financial Services (collectively "Defendants") maintain a physical address at 3151 Airway Ave, Suite E-2, Costa Mesa, California 92626.

## STATEMENT OF FACTS

5. On or about December 12, 1993, Scott registered with the Department as a securities broker-dealer agent (CRD # 1174431). From that time, until 1999, Scott was employed by various securities broker-dealer firms.

6. On or about May 19, 1995, the National Association of Securities Dealers, Inc. ("NASD"), a self-regulatory organization authorized by Congress to regulate the activities of securities broker-dealers, censured and fined Scott $2,500.00 for violations of Article III, sections 1 and 43 of the NASD Rules of Fair Practice. Scott signed a Letter of Acceptance, Waiver and Consent stating, "Scott received compensation ... from public customers ... in connection with his participation in outside business activities in that he provided financial planning and advisory services to these customers for a fee." Further, the Letter of Acceptance, Waiver and Consent indicates that "[t]hese activities were outside the scope of Scott's relationship with his employer firm."

7. On or about April 30, 1999, Scott was terminated by his employer firm, located in Southern California, based on that company's determination that "Scott borrowed money from 13 clients and charged investment advisory fees to 13 clients without proper qualification."



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Thereinafter Scott has not been registered with the Department as a securities broker-dealer agent.

8. On or about September 27, 1999, Scott applied for an Orange County Fictitious Business License for a business named "Benchmark Financial Services."

9. On or about December 7, 2000, the NASD fined Scott $15,000.00 and suspended him from associating with any NASD member for two years, for violations of NASD Rules 2110, 3030 and 3040. Scott signed a Letter of Acceptance, Waiver and Consent stating that during April 1995 through May 1998, "Scott sold securities in the form of promissory notes to 13 public customers," raising approximately $160,000.00. "Scott told investors that their funds would be used to finance his company called Master Market Forum ('MMF'). MMF was a developmental stage company through which Scott intended to conduct financial planning seminars and produce video tapes." "With respect to three of the customers ... Scott charged them $500 annually in exchange for various financial planning services." Further, the Letter of Acceptance, Waiver and Consent indicates that Scott engaged in these activities without first receiving permission from his employer firm.

10. In or about 1999, Scott began providing discretionary investment advice to California residents in connection with his business Benchmark Financial Services. Benchmark Financial Services provides services including asset management, investment management and portfolio analysis and evaluation. Further, Benchmark Financial Services researches, "picks" and recommends mutual funds for clients to invest in.

11. Benchmark Financial Services receives compensation for the investment advisory services it provides to California residents. Benchmark Financial Services charges a fee, which can reach up to $2,000.00 per client, for developing and drafting financial plans. Further, for Benchmark Financial Services' mutual fund research and recommendations, clients are charged a 1% annual fee based on the balance held in clients' mutual fund accounts. The fee is charged in semi-annual increments on December 31 and June 30, which is billed to clients in January and July, respectively.

12. Scott estimated that Benchmark Financial Services has about 40 clients with approximately $15,000,000.00 invested in mutual funds. Thus, Benchmark Financial Services



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receives approximately $150,000.00, in commissions, annually as a result of the 1% fee charged to clients for the mutual fund research and recommendations.

13. In order to attract new clients, Benchmark Financial Services hosts monthly seminars that are geared toward senior citizens. Attendees commonly receive a free meal at the seminar. Solicitation materials provided to seminar attendees identify Scott as "founder of BENCHMARK FINANCIAL SERVICES ... an independent financial planner and Registered Investment Advisor." Other solicitation materials contain client testimonials, such as "Steven [Scott] goes beyond normal financial advisors;" "He gives us options and explains why you should take one method over another;" and "Enclosed is payment to you for initiating my financial plan. I'm very excited about the change I'm making."

14. Scott knowingly has conducted business as an unlicensed investment adviser. Scott admits that he has been "out of compliance" with the California Corporations Code for two years and more specifically admits that he is not licensed to provide investment advice and is not registered as an investment adviser.

15. California Corporations Code section 25230 provides that it is unlawful to conduct business as an investment adviser in this state without having first applied for and secured a certificate from the California Corporations Commissioner, or unless exempt. Scott and Benchmark Financial Services have neither held a valid investment adviser certificate issued by the California Corporations Commissioner nor have Defendants been an investment adviser registered with the Securities and Exchange Commission. Further, Scott and Benchmark Financial Services are not exempt from the certification requirement of California Corporations Code section 25230.

16. California Corporations Code section 25235 subdivision (d) provides that it is unlawful for any investment adviser, directly or indirectly, to engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative. Sections of the California Code of Regulations further define fraudulent, deceptive, or manipulative practices to include the distribution of advertisements containing client testimonials and misrepresentations of material fact, and failure to disclose a disciplinary history. Defendants distribute advertisements containing



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client testimonials and misrepresentations that Scott is a "financial planner" and "Registered Investment Advisor." Further, Scott failed to disclose to clients and potential clients that he was fined and suspended by the NASD.

## FIRST CAUSE OF ACTION

## CONDUCTING BUSINESS AS AN INVESTMENT ADVISER WITHOUT A CERTIFICATE IN VIOLATION OF CORPORATIONS CODE SECTION 25230

## (AGAINST ALL DEFENDANTS)

17. Plaintiff incorporates by reference paragraphs 1 through 16 of this Complaint as though fully set forth herein.

18. California Corporations Code section 25009 defines "investment adviser," in relevant part, as:

> (a) "Investment Adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, publishes analyses or reports concerning securities .... .
> (b) "Investment Adviser" also includes any person who uses the title "financial planner" and who, for compensation, engages in the business ... of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities .... .

19. California Corporations Code section 25230 subdivision (a), in relevant part, provides:

> 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 ... 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.



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20. Defendants have and continue to conduct business as an investment adviser without first obtaining the required certificate from the Commissioner in violation of Corporations Code section 25230. Defendants refer to themselves as "financial planners" and "Registered Investment Advisors." Defendants manage client assets, evaluate client investment portfolios and develop and draft financial plans for clients. Defendants conduct market research and monitoring, and recommend investment opportunities to clients. Furthermore, Defendants receive compensation for the investment advice provided.

21. Defendants, in conducting said investment adviser business, are investment advisers within the meaning of California Corporations Code section 25009.

22. At all relevant times, Defendants have not possessed a certificate from the Commissioner authorizing them to engage in the business activities of an investment adviser.

23. Defendants are also not exempt from the provisions of California Corporations Code section 25230 requiring investment advisers to obtain a certificate from the Commissioner.

24. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for preliminary and, ultimately, permanent injunctive relief, an award of civil penalties and ancillary relief to deter, restrain and prevent such and similar acts in violation of California Corporations Code section 25230 in the future. Unless enjoined, Defendants will continue to violate section 25230 of the California Corporations Code.

## SECOND CAUSE OF ACTION

## FRAUD BY AN INVESTMENT ADVISER IN VIOLATION OF CORPORATIONS CODE SECTION 25235, PURSUANT TO CODE OF REGULATIONS SECTION 260.235(a)(1) (AGAINST ALL DEFENDANTS)

25. Plaintiff incorporates by reference paragraphs 1 through 24 of this Complaint as though fully set forth herein.

26. California Corporations Code section 25235 subdivision (d) provides that it is unlawful for any investment adviser, directly or indirectly:



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> To engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The commissioner shall, for the purpose of this subdivision, by rule define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

27. California Code of Regulations, title 10, section 260.235 defines the terms fraudulent, deceptive or manipulative as used in California Corporations Code section 25235. Section 260.235, in relevant part, provides:

> (a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business, within the meaning of Section 25235 of the Code, for an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:[1]
>
> ...
>
> (1) which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser ... .

28. Defendants, in distributing solicitation materials containing client testimonials, are engaged in fraudulent, deceptive, or manipulative practices within the meaning of California Corporations Code section 25235 subdivision (d), pursuant to California Code of Regulations, title 10, section 260.235 subdivision (a)(1). Solicitation materials distributed by Defendants contain client testimonials concerning the investment advice, analysis and services rendered by Defendants.

29. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for preliminary and, ultimately, permanent injunctive relief, an award of civil penalties and ancillary relief to deter, restrain and prevent such and similar acts in violation of California Corporations Code section 25235, pursuant to California Code of Regulations, title 10, section 260.235 subdivision (a)(1) in the future. Unless enjoined, Defendants will continue to violate section 25235 of the California Corporations Code.

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[1] For the purpose of section 260.235, the term "advertisement" includes "any notice, circular, letter or other written communication addressed to more than one person ... ." (Cal. Code Regs., tit. 10, § 260.235, subd. (b).)



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## THIRD CAUSE OF ACTION

## FRAUD BY AN INVESTMENT ADVISER IN VIOLATION OF CORPORATIONS CODE SECTION 25235, PURSUANT TO CODE OF REGULATIONS SECTION 260.235(a)(5)

## (AGAINST ALL DEFENDANTS)

30. Plaintiff incorporates by reference paragraphs 1 through 29 of this Complaint as though fully set forth herein.

31. As stated above, California Corporations Code section 25235 subdivision (d) provides that it is unlawful for any investment adviser, directly or indirectly, to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. (Cal. Corp. Code, § 25235, subd. (d).)

32. California Code of Regulations, title 10, section 260.235 defines the terms fraudulent, deceptive or manipulative as used in California Corporations Code section 25235. Section 260.235, in relevant part, provides:

> (a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business, within the meaning of Section 25235 of the Code, for an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:
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> ...
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> (5) which contains any untrue statement of a material fact, or which is otherwise false or misleading.

33. Defendants, in distributing advertisements containing the misrepresentation that Scott is a financial planner and registered investment adviser, are engaged in fraudulent, deceptive, or manipulative practices within the meaning of California Corporations Code section 25235 subdivision (d), pursuant to California Code of Regulations, title 10, section 260.235 subdivision (a)(5). Potential clients that attend seminars hosted by Benchmark Financial Services are provided solicitation materials containing the misrepresentation that Scott is a "financial planner and Registered Investment Advisor."

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34. At all relevant times, Defendants have never possessed a certificate from the Commissioner authorizing them to engage in the business activities of an investment adviser nor have Defendants been an investment adviser registered with the Securities and Exchange Commission.

35. Defendants are not exempt from the provisions of California Corporations Code section 25230 requiring investment advisers to obtain a certificate from the Commissioner.

36. Defendants' misrepresentation is untrue, false and misleading to potential clients who are interested in receiving the professional services of an investment adviser.

37. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for preliminary and, ultimately, permanent injunctive relief, an award of civil penalties and ancillary relief to deter, restrain and prevent such and similar acts in violation of California Corporations Code section 25235, pursuant to California Code of Regulations, title 10, section 260.235 subdivision (a)(5) in the future. Unless enjoined, Defendants will continue to violate section 25235 of the California Corporations Code.

## FOURTH CAUSE OF ACTION

## FRAUD BY AN INVESTMENT ADVISER IN VIOLATION OF CORPORATIONS CODE SECTION 25235, PURSUANT TO CODE OF REGULATIONS SECTION 260.235.4 (AGAINST ALL DEFENDANTS)

38. Plaintiff incorporates by reference paragraphs 1 through 37 of this Complaint as though fully set forth herein.

39. As stated above, California Corporations Code section 25235 subdivision (d) provides that it is unlawful for any investment adviser, directly or indirectly, to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. (Cal. Corp. Code, § 25235, subd. (d).)

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40. California Code of Regulations, title 10, section 260.235.4 defines the terms fraudulent, deceptive or manipulative as used in Corporations Code section 25235. Section 260.235.4, in relevant part, provides:

> (a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of Section 25235 of the Code for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:
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> ...
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> (2) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.
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> (b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser ... that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (a)(2) of this rule for a period of 10 years from the time of one or more of the following events:
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> ...
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> (3) Self-Regulatory Organization ("SRO")[2] proceedings in which the person:
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> ...
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> (B) Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO ... fining the person more than $2,500; or ... otherwise significantly limiting the person's investment-related activities.

41. On or about December 7, 2000, the NASD found that Scott violated NASD Rules 2110, 3030 and 3040. As a result of said violations, the NASD ordered Scott to pay a fine of $15,000.00 and suspended him from associating with any NASD member for two years.

42. Defendants have failed to disclose the existence of the NASD proceeding to clients and potential clients who are interested in receiving the professional services of an investment adviser.

43. Defendants' failure to disclose the NASD proceeding constituted a fraudulent, deceptive, or manipulative act under Corporations Code section 25235 subdivision (d), and thus, Defendants have violated Corporations Code section 25235 subdivision (d).

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[2] "Self-Regulatory Organization" or "SRO" means those terms as defined in 17 C.F.R. 275.206(4)-4(d)(5). (Cal. Code Regs., tit. 10, § 260.235.4, subd. (d)(5).) The Code of Federal Regulations defines those terms to mean "any national securities or commodities exchange, registered association, or registered clearing agency." (17 C.F.R. § 275.206(4)-4(d)(5) (2006).)



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44. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for preliminary and, ultimately, permanent injunctive relief, an award of civil penalties and ancillary relief to deter, restrain and prevent such and similar acts in violation of California Corporations Code section 25235, pursuant to California Code of Regulations, title 10, section 260.235.4 in the future. Unless enjoined, Defendants will continue to violate section 25235 of the California Corporations Code.

## PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against Defendants Scott, an individual, and doing business as Benchmark Financial Services as follows:

1. For a Temporary Restraining Order, an Order of Preliminary Injunction and, ultimately, a Permanent Injunction restraining and enjoining Defendants from, directly or indirectly:

a. Violating California Corporations Code section 25230 by conducting business as an investment adviser without a certificate from the Corporations Commissioner, or substantially assisting the violations thereof in the State of California;

b. Violating California Corporations Code section 25235 subdivision (d) by engaging in fraudulent, deceptive, or manipulative practices, including but not limited to distributing advertisements containing client testimonials, within the meaning of California Code of Regulations, title 10, section 260.235 subdivision (a)(1);

c. Violating California Corporations Code section 25235 subdivision (d) by engaging in fraudulent, deceptive, or manipulative practices, including but not limited to distributing advertisements containing misrepresentations of material fact which is otherwise false or misleading, within the meaning of California Code of Regulations, title 10, section 260.235 subdivision (a)(5);

d. Violating California Corporations Code section 25235 subdivision (d) by engaging in fraudulent, deceptive, or manipulative practices, including but not limited to failing to disclose a self-regulatory organization disciplinary proceeding, within the meaning of California Code of Regulations, title 10, section 260.235.4 subdivision (a)(3);



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e. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, documents, correspondence, brochures, manuals, or other documents of any kind in the possession, custody or control of the Defendants, including but not limited to those pertaining to the above referenced acts; and

f. Transferring, changing, disbursing, selling, dissipating, converting, pledging, assigning, foreclosing or otherwise disposing of any real or personal property or assets, in their possession or under their control, or in the possession of, or under the control of, any of them, which property or other assets are or were to be held for the benefit of Defendants' clients and/or creditors, or by any person for the benefit of any clients and/or creditors of Defendants, and each of them, whether in trust or otherwise.

2. For Judgment requiring the Defendants to pay civil penalties to the California Corporations Commissioner for each specific violation, in an amount of $25,000.00 per violation according to proof, pursuant to Corporations Code section 25535.

3. For Judgment requiring the Defendants to disgorge commissions from the unlicensed investment adviser activity, according to proof.

4. That plaintiff recover its costs of suit herein.

5. For such and further relief as the court may deem just and proper.

Dated: July 10, 2006

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
ALEXANDER M. CALERO
Corporations Counsel
Attorney for the People of California



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