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FILED
Clerk of the Superior Court

MAY 02 2012

By: L. SAN NICOLAS, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA, by and through the
California Corporations Commissioner,

13 Plaintiff,

14 vs.

15 RMC CAPITAL MANAGEMENT, INC., a
California corporation; BURGESS
16 NATHANIEL HALLUMS, an individual;
INNOVATION FUND 2000, LLC, a
17 California limited liability company; SEGUE
CAPITAL, INC., a California corporation;
18 PACIFIC PHOENIX COMMUNITIES, LLC,
a California limited liability company;
19 DAVID W. HOPTAR, an individual; and
DOES 1-10, inclusive,

20 Defendants,

21 and

22 IMMCAPNMOTION, INC., a Delaware
corporation; MISTNET MEDICAL
23 DEVICES, INC., a Delaware corporation;
MAGNETO INERTIAL SENSING
24 TECHNOLOGY, INC., aka, MIST, a Nevada
corporation; MIST NET, INC., an entity of
unknown form; MIST, INC., an entity of
25 unknown form; THORNTON CAPITAL
ADVISORS, INC., a California corporation;
26 DONALD J. COURTNEY, an individual;
WALLACE BENWARD, an individual; and
27 RELIEF DOES 1-10, inclusive,

28 Relief Defendants.

Case No.: 37-2011-00103198-CU-MC-CTL

**SECOND AMENDED COMPLAINT FOR
TEMPORARY RESTRAINING ORDER;
PRELIMINARY INJUNCTION;
PERMANENT INJUNCTION; FREEZING
OF ASSETS; APPOINTING A RECEIVER;
CIVIL PENALTIES; AND ANCILLARY
RELIEF**

IMAGED FILE

Judge: Hon. William S. Dato
Dept: C-67

Date Action Filed: December 30, 2011

1 Jan Lynn Owen, California Corporations Commissioner, acting to protect the public from
2 unlawful and fraudulent investment adviser activities, brings this action in the public interest, in the
3 name of the People of the State of California. The People of the State of California allege:

4 **JURISDICTION AND VENUE**

5 1. Plaintiff, the California Corporations Commissioner (“Plaintiff” or “Commissioner”),
6 in the name of the People of the State of California and in her capacity as head of the California
7 Department of Corporations (“Department”), brings this action to protect the public by enjoining
8 defendants from violating the California Corporate Securities Law of 1968 (“CSL”) (Corp. Code, §
9 25000 *et seq.*), and to request appointment of a receiver, a freeze of assets, civil penalties, and
10 ancillary relief.

11 2. This court has jurisdiction pursuant to Corporations Code sections 25530 and 25535.
12 Venue is proper in this Court because the violations of the CSL described below have occurred and
13 will continue to occur within the County of San Diego and throughout this state unless enjoined.

14 3. Defendants and relief defendants have transacted business within San Diego County
15 and other counties in California. At all relevant times, defendants’ and relief defendants’ places of
16 business were located in San Diego County.

17 **SUMMARY**

18 4. This matter involves fraudulent, manipulative, and deceptive investment advisory
19 activities perpetrated by an investment adviser and its representatives, and defendants’
20 misrepresentation of a material fact and failure to disclose material facts in connection with the offer
21 and sale of securities, in California.

22 5. From 2000 to 2011, defendants raised approximately \$11.5 million from at least fifty
23 nine clients, some of which are California residents.

24 6. Defendants engaged in multiple violations of the CSL, including violations of: (a)
25 Corporations Code section 25235, by employing fraudulent, deceptive and manipulative practices to
26 the detriment of clients; and operating a Ponzi scheme, where money from new clients is used to pay
27 off existing clients; (b) Corporations Code section 25238, by engaging in investment advisory
28 activities in an unfair, inequitable and unethical manner; (c) Corporations Code section 25241, by

1 maintaining false and inaccurate books and records; (d) Corporations Code section 25404, by
2 misleading the Commissioner during an investigation; (e) California Code of Regulations section
3 260.237, by failing to have clients' funds and securities audited and failing to provide itemized
4 statements to clients; and (f) Corporations Code section 25401, by misrepresenting a material fact
5 and failing to disclose material facts in connection with the offer and sale of securities, in California.

6 7. Plaintiff is informed and believes that defendants used IMMCAPNMOTION, INC., a
7 Delaware corporation; MISTNET MEDICAL DEVICES, INC., a Delaware corporation;
8 MAGNETO INERTIAL SENSING TECHNOLOGY, INC., aka, MIST, a Nevada corporation;
9 MIST NET, INC., an entity of unknown form; MIST, INC., an entity of unknown form;
10 THORNTON CAPITAL ADVISORS, INC., a California corporation; DONALD J. COURTNEY,
11 an individual; and WALLACE BENWARD, an individual (collectively, "RELIEF
12 DEFENDANTS") to perpetrate their fraud and unlawful activities. RELIEF DEFENDANTS
13 received ill-gotten gains resulting from defendants' violations of the CSL.

14 8. The Commissioner brings this action, in the name of the People, in order to obtain
15 (a) a temporary restraining order restraining and enjoining defendants from violating the CSL; (b)
16 locating and freezing defendants' and entity relief defendants' business and personal assets; and (c)
17 appointing a receiver to take custody and control over defendants' and entity relief defendants'
18 business and personal assets until an accounting can be performed by the receiver and
19 recommendations made to the court, to preserve any remaining assets and allow the receiver to
20 determine the extent to which defendants defrauded clients. Defendants have custody or possession
21 of client funds and securities and allowing client funds and securities to remain under the custody or
22 possession of defendants puts these funds and securities in further jeopardy.

23 **DEFENDANTS**

24 9. RMC Capital Management, Inc. ("RMC"), a California corporation, is a licensed
25 investment adviser that provides investment adviser services to the investing public. At all relevant
26 times, RMC maintained a principal place of business at 1140 Main Street, Suite 115, Ramona,
27 California 92065.

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1 times, HALLUMS was the Secretary, Chief Financial Officer, and Agent for Service of Process of
2 MIST DELAWARE.

3 17. At all relevant times, Magneto Inertial Sensing Technology, Inc., aka, MIST (“MIST
4 NEVADA”), a Nevada corporation, maintained a place of business at 6965 El Camino Real, PMB
5 105-225, Carlsbad, California 92009.

6 18. At all relevant times, Mist Net, Inc., an entity of unknown form, maintained a postal
7 mail box at 6965 El Camino Real, PMB 105-225, Carlsbad, California 92009.

8 19. At all relevant times, Mist, Inc., an entity of unknown form, maintained a postal mail
9 box at 6965 El Camino Real, PMB 105-225, Carlsbad, California 92009.

10 20. At all relevant times, Donald J. Courtney (“COURTNEY”), an individual, maintained
11 a postal mail box at 6965 El Camino Real, PMB 105-225, Carlsbad, California 92009. At all
12 relevant times, COURTNEY was the Chief Executive Officer of IMMCAP and MIST
13 DELAWARE, the President, Secretary, Treasurer and a Director of MIST NEVADA, and the
14 control person of Mist Net, Inc. and Mist, Inc.

15 21. Wallace Benward (“BENWARD”), an individual, resides in San Diego County,
16 California. At all relevant times, BENWARD was a managing member of PACIFIC PHOENIX.

17 22. Thornton Capital Advisors, Inc. (“THORNTON”), a California corporation, had its
18 powers, rights, and privileges suspended by the California Franchise Tax Board as of September 2,
19 2008. At all relevant times, THORNTON maintained a principal place of business at 9710 Scranton
20 Road, Suite 160, San Diego, California 92121. HALLUMS was the Secretary and a Director of
21 THORNTON.

22 **FACTUAL BACKGROUND**

23 23. RMC is, and was at all relevant times, an Investment Adviser licensed by the
24 Commissioner, pursuant to California Corporations Code section 25230.

25 24. HALLUMS is, and was at all relevant times, a licensed Investment Adviser
26 Representative, Chief Executive officer, Chief Financial Officer, and President of RMC.

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1 25. An investment adviser and its representatives owe a fiduciary duty to their clients.
2 HALLUMS on behalf of RMC signed licensing forms agreeing to be familiar and to comply with the
3 statutes and regulations governing investment advisers.

4 26. In or about February 2011, the Department commenced an examination of
5 Defendants RMC, HALLUMS, and INNOVATION FUND (collectively, "IA DEFENDANTS").
6 The Department discovered that INNOVATION FUND is one of two pooled investment vehicles
7 that HALLUMS and RMC manage, and use to invest client funds.

8 27. In response to the Department's request for information to IA DEFENDANTS, they
9 mainly provided INNOVATION FUND's books and records. The books and records provided to the
10 Department were incomplete. According to IA DEFENDANTS, some of their records were
11 destroyed in a fire.

12 28. The Department has reviewed and analyzed limited books and records produced by
13 IA DEFENDANTS and RELIEF DEFENDANTS, including, but not limited to, financial statements,
14 correspondence, and private holding documents. Further, the Department took into consideration
15 statements made by HALLUMS and COURTNEY. In addition, the Department reviewed and
16 analyzed licensing disclosure documents filed by RMC and HALLUMS. A review and analysis of
17 these documents and statements reveals the following:

18 **A. OPERATING A PONZI SCHEME**

19 29. IA DEFENDANTS operated a Ponzi scheme by using funds from new clients of
20 INNOVATION FUND to cover withdrawals of funds made by existing clients of INNOVATION
21 FUND.

22 30. For example, in September 2010, INNOVATION FUND's Bank of America
23 checking account ("BOA"), where clients' funds are maintained, had a balance of \$331.05. IA
24 DEFENDANTS used deposits from two of their new clients, in an amount of \$190,000, to pay
25 withdrawals of funds made by existing clients, in the amount of \$40,085.89, and to pay withdrawal
26 of funds made by SEGUE, in the amount of \$2,500.

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1 31. As stated previously, HALLUMS is the Chief Executive Officer, Chief Financial
2 Officer, President, Secretary and Agent for Service of Process of SEGUE, which shared the same
3 principal place of business as IA DEFENDANTS.

4 32. At all relevant times, HALLUMS exercised control over SEGUE, an investor in the
5 INNOVATION FUND.

6 33. In 2011, at least 13 clients of INNOVATION FUND received payments largely
7 derived from investments of new clients of INNOVATION FUND, in an approximate amount of
8 \$609,146.

9 **B. MISUSE OF CLIENT FUNDS**

10 34. IA DEFENDANTS used clients' funds to make payments to HOPTAR in the
11 approximate amount of \$60,524.82. IA DEFENDANTS did not produce any records to the
12 Department explaining these payments.

13 35. IA DEFENDANTS used clients' funds to make payments to COURTNEY in the
14 approximate amount of \$12,200. IA DEFENDANTS did not produce any records to the Department
15 explaining these payments.

16 36. Records produced by IA DEFENDANTS show payments and loans to Mist, Inc. IA
17 DEFENDANTS' records fail to document which entity: MIST DELAWARE, MIST NEVADA,
18 Mist, Inc., and/or Mist Net, Inc. (collectively, "MIST ENTITIES") received these payments and
19 loans.

20 37. In 2010, IA DEFENDANTS used clients' funds to make at least two loans to the
21 detriment of their clients: (1) a promissory note in the amount of \$35,000 paid to AGC Capital Inc.
22 and Troy Wilkinson; and (2) a promissory note in the amount of \$74,000 paid to at least one of the
23 MIST ENTITIES.

24 38. Both promissory notes contain the same illusory promise, and are detrimental to IA
25 DEFENDANTS' clients because the loans will not be paid back unless there is a positive cash flow
26 from the borrowers. As the result of these loans, there is no record of any payment or income
27 coming back to clients.

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1 39. In addition to the two loans, INNOVATION FUND's balance sheet shows six
2 payments to at least one of the MIST ENTITIES, in the total amount of \$42,600, from June 2010 to
3 November 2010. Three out of the six payments are listed as loans in the sum of \$19,700. IA
4 DEFENDANTS failed to provide the Department with records corresponding to the three loans and
5 any other record explaining the reason for the payments to the MIST ENTITIES.

6 **C. OVERSTATING VALUE OF THE PRIVATELY HELD SECURITIES**

7 40. IA DEFENDANTS invested clients' funds in privately held securities that are
8 affiliated and/or controlled by HALLUMS, including, the MIST ENTITIES, IMMCAP, and
9 THORNTON.

10 41. In response to the Department's inquiry about the amount of investments in privately
11 held securities made by the INNOVATION FUND, IA DEFENDANTS produced four versions of a
12 one-page document titled Innovation Fund Pricing ("IFP"). Each IFP version shows a different
13 value assigned by IA DEFENDANTS to these privately held companies, for the same time period in
14 2010.

15 42. IA DEFENDANTS valued IMMCAP at \$1.2 million, \$1.4 million or \$2 million; one
16 of the MIST ENTITIES at \$2.4 million or \$2.9 million; and THORNTON at \$1.75 million or \$2.9
17 million. IA DEFENDANTS failed to produce documents substantiating the actual amounts invested
18 in these privately held securities.

19 43. Records produced by IA DEFENDANTS contradict the value assigned to
20 THORNTON. In 2008, IA DEFENDANTS sent correspondence to a third party custodian and
21 clients stating that THORNTON was worthless and had no value.

22 44. Upon information and belief, THORNTON had ceased business and taken a total loss
23 as of December 2006. HALLUMS, a Director of THORNTON, had attended telephonic meetings
24 where THORNTON had discussed its closure and capital losses, in or about December 2006.

25 45. Despite THORNTON's worthless value, a December 31, 2010 statement sent to
26 clients reflected that THORNTON had value.

27 46. In 2011 and in response to the Department's examination addressing the valuation of
28 THORNTON, HALLUMS claimed that THORNTON still has a value of \$2.9 million.

1 47. The IFP documents show that IA DEFENDANTS invested clients' funds in other
2 privately held securities, such as EAGENCY, INC. ("EAGENCY"). IA DEFENDANTS valued
3 EAGENCY at \$300,000, as of December 31, 2010.

4 48. Based on EAGENCY's balance sheet dated June 30, 2010, its liabilities exceeded its
5 assets by \$916,055. EAGENCY's financial statements reflect negative retained earnings and equity,
6 and the \$300,000 value reported by IA DEFENDANTS is false.

7 49. Records produced by IA DEFENDANTS show that the INNOVATION FUND
8 invested approximately \$200,000 in IMMCAP and one of the MIST ENTITIES.

9 50. Upon information and belief, IMMCAP and the MIST ENTITIES have not generated
10 any revenues.

11 51. Upon information and belief, INNOVATION FUND's value at cost is overstated by
12 at least \$3.5 million.

13 **D. INFLATED ADVISORY FEES**

14 52. The overvaluation of the INNOVATION FUND's value resulted in inflated advisory
15 fees being charged to clients for management of the INNOVATION FUND.

16 53. RMC is the manager of the INNOVATION FUND, and also an investor in the
17 INNOVATION FUND.

18 54. RMC, as the manager of the INNOVATION FUND, charges a fee for its
19 management of the INNOVATION FUND.

20 55. The advisory fees for RMC's management of the INNOVATION FUND, in the
21 amount of \$499,089, were never deducted from the INNOVATION FUND and instead only added
22 to RMC's position as an investor in the INNOVATION FUND. Because the added advisory fees
23 were not actual growth or increase in the INNOVATION FUND's value, the INNOVATION
24 FUND's value is overstated in the amount of \$499,089 as of 2010.

25 **E. FALSE STATEMENTS SENT TO CLIENTS**

26 56. Falsely leading clients to presume that their investments in the INNOVATION
27 FUND were worth more than their actual value, a December 2010 statement sent to clients reflect a
28

1 price per share of \$43. According to HALLUMS, the reported \$43 per share is based on the
2 INNOVATION FUND's value being \$15 million.

3 57. In response to the Department's examination, HALLUMS admits that there was a
4 problem with the \$43 share price and INNOVATION FUND probably should have been valued at
5 approximately \$7.5 million instead of \$15 million.

6 **F. FALSE AND INACCURATE RECORD KEEPING**

7 58. IA DEFENDANTS maintained false and inaccurate books and records.

8 59. The following are examples of IA DEFENDANTS failure to maintain true and
9 accurate books and records: (a) Contrary to the reported assets in the amount of \$7,503,306,
10 INNOVATION FUND's Balance Sheet, Income Statement, and General Ledger reflect assets in the
11 amount of \$111,821 as of December 31, 2010; (b) Contrary to the IFP documents, the values of
12 MIST ENTITIES, IMMCAP, THORNTON, and EAGENCY were not reported on INNOVATION
13 FUND's Balance Sheet and General Ledger as of December 31, 2010; (c) The IFP documents,
14 valuing THORNTON at \$1.75 million and \$2.9 million, are contrary to THORNTON's closure and
15 correspondence sent to a third party custodian and clients; (d) The IFP documents, valuing
16 EAGENCY at \$300,000, are contrary to EAGENCY's negative retained earnings and equity; (e) The
17 IFP documents show conflicting values for IMMCAP and the MIST ENTITIES, for the same time
18 period in 2010; (f) The discrepancies between INNOVATION FUND's Balance Sheet, Spreadsheet,
19 and the IFP documents are irreconcilable; (g) INNOVATION FUND's brokerage trading account at
20 BrokersXpress, LLC was not reported on INNOVATION FUND's Balance Sheet and General
21 Ledger as of December 31, 2010; (h) Six payments to one of the MIST ENTITIES for the period of
22 June 2010 to November 2010 in the sum of \$42,600 are not reconciled to the IFP documents; (i)
23 Three out of six payments are listed as loans, yet there are no records substantiating these payments;
24 (j) An unexplained mortgage payment, in an amount of \$2,363.54, and a payment to Impulsive
25 Profit, Inc., in an amount of \$50,000, are recorded on the General Ledger; (k) Unverified continual
26 increase in assets and price per share - IA DEFENDANTS' books and records do not include any
27 accounting or schedule that keeps track of any gains or losses to demonstrate how the assets or the
28 price per share have increased over the years; (l) There is a discrepancy between INNOVATION

1 FUND's 2010 schedule of investments and its 2010 Balance Sheet for RMC's position as an
2 investor, in an amount of at least \$1.07 million; (m) Lack of documentation substantiating the
3 amount of clients' funds being invested in the MIST ENTITIES and IMMCAP, in the amount of
4 \$3.6 million; and (n) Unexplained payments to COURTNEY in an amount of \$12,200.

5 **G. FAILURE TO HAVE CLIENT FUNDS AND SECURITIES AUDITED**

6 60. RMC, an investment adviser, has custody and possession of client funds and
7 securities and is subject to an annual audit.

8 61. HALLUMS admitted that there has never been an annual audit or verification of
9 clients' funds or securities, nor has any filing of these types of reports ever been made with the
10 Department. IA DEFENDANTS failed to have clients' funds and securities audited by an
11 independent Certified Public Accountant or a public accountant from 2000 to 2010.

12 **H. FAILURE TO PROVIDE ITEMIZED STATEMENTS TO CLIENTS**

13 62. HALLUMS admitted that IA DEFENDANTS did not provide itemized statements to
14 clients from 2000 to 2010.

15 63. INNOVATION FUND's statements sent to clients only reflect each client's share of
16 the fund, the price per share, and the total dollar value of the client's investment. Statements sent to
17 clients were not itemized.

18 **I. MISREPRESENTATIONS AND OMISSIONS:**

19 64. Upon information and belief, BENWARD and SEGUE, by and through HALLUMS,
20 manage and exercise control over PACIFIC PHOENIX.

21 65. In or about August 2011, HALLUMS, SEGUE, and PACIFIC PHOENIX offered and
22 sold securities in the form of membership interests in PACIFIC PHOENIX to at least one California
23 resident.

24 66. The purported purpose of the offering was to use pooled investor money to purchase
25 land in California, and to build affordable senior housing.

26 67. In or about August 2011, a client of IA DEFENDANTS and a California resident
27 invested approximately \$333,041 in PACIFIC PHOENIX.

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1 68. In connection with the offer and sale of the PACIFIC PHOENIX securities,
2 HALLUMS, SEGUE, and PACIFIC PHOENIX failed to disclose material facts, including, but not
3 limited to, the following:

4 A. BENWARD, a managing member of PACIFIC PHOENIX, had defaulted on a loan in
5 the principal amount of approximately \$16.5 million;

6 B. PACIFIC PHOENIX would make payments to entities in the approximate amount of
7 \$30,000; and

8 C. PACIFIC PHOENIX would make a payment to American Express for the benefit of
9 COURTNEY in the approximate amount of \$4,214.93.

10 69. Upon information and belief, HOPTAR solicited and referred clients to IA
11 DEFENDANTS.

12 70. From 2001 and continuing on, HOPTAR, HALLUMS and INNOVATION FUND
13 offered and sold securities, in the form of interests in the INNOVATION FUND, in California.

14 71. In connection with the offer and sale of the INNOVATION FUND securities,
15 HOPTAR, HALLUMS and INNOVATION FUND failed to disclose material facts to one or all of
16 the prospective clients. The omissions included, without necessarily being limited to, the following:

17 A. In 1999, the United States Attorney for the District of Nevada charged HOPTAR with
18 conspiracy, money laundering, mail fraud, and securities fraud. The United States Attorney alleged
19 that HOPTAR engaged in a Ponzi scheme. HOPTAR pleaded guilty to one felony count of sale of
20 unregistered securities.

21 B. On December 14, 2001, Hon. Kent J. Dawson of the United States District Court,
22 District of Nevada, sentenced HOPTAR to probation for a term of 36 months. As a condition of his
23 probation, HOPTAR was restricted from engaging in employment, consulting, or any association
24 with any telemarketing or securities and stock sales business. HOPTAR was ordered by the court to
25 notify third parties of risks that may be occasioned by his criminal record or personal history or
26 characteristics.

27 72. In connection with the offer and sale of the INNOVATION FUND securities,
28 HALLUMS and INNOVATION FUND made an untrue statement of a material fact to one or all of

1 the prospective clients. The misrepresentation included, without necessarily being limited to, the
2 following:

3 A. INNOVATION FUND would make investments primarily in publicly traded
4 companies. Instead, INNOVATION FUND invested only a small portion of client funds in
5 publically traded companies.

6 **FIRST CAUSE OF ACTION**
7 **FRAUD BY INVESTMENT ADVISER**
8 (Violations of Corp. Code § 25235)
9 (AGAINST DEFENDANTS RMC, HALLUMS, and INNOVATION FUND)

10 73. Plaintiff incorporates by reference paragraphs 1 through 72 of this Complaint as
11 though fully set forth herein.

12 74. Corporations Code section 25235, in pertinent part, states that it is unlawful for any
13 investment adviser, directly or indirectly, in this state:

- 14 (a) To employ any device, scheme, or artifice to defraud any client or
15 prospective client.
- 16 (b) To engage in any transaction, practice, or course of business which
17 operates or would operate as a fraud or deceit upon any client or prospective
18 client.

19 75. Operating a Ponzi scheme, and in violation of Corporations Code section 25235,
20 subdivisions (a) and (b), IA DEFENDANTS employed a scheme to defraud and engaged in
21 transactions that operated as a fraud by using funds from INNOVATION FUND's new clients to
22 cover withdrawals of funds made by INNOVATION FUND's existing clients.

23 76. For example, in September 2010, INNOVATION FUND's BOA had a balance of
24 \$331,051. IA DEFENDANTS used deposits from two new clients, in an amount of \$190,000, to pay
25 withdrawals of funds made by existing clients, in the amount of \$40,085.89. IA DEFENDANTS
26 also used the deposits from the two new clients to pay withdrawals of funds made by SEGUE,
27 HALLUMS' corporation, in the amount of \$2,500.

28 77. In 2011, at least 13 clients of the INNOVATION FUND received payments largely
derived from investments of new clients of INNOVATION FUND, in an approximate amount of
\$609,146.

1 78. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS
2 employed a scheme to defraud and engaged in transactions that operated as a fraud by using clients'
3 funds for loans to the detriment of their clients, where the borrowers would perform only if the
4 borrowers have a positive cash flow.

5 79. IA DEFENDANTS loaned \$74,000 to one of the MIST ENTITIES. IA
6 DEFENDANTS' records fail to document which MIST ENTITIES received the payments of this
7 loan, which will not be paid back unless the MIST ENTITIES have a positive cash flow. The other
8 promissory note in the amount of \$35,000 to AGC Capital Inc. and Troy Wilkinson contains the
9 same illusory promise as the MIST ENTITIES' promissory note. MIST ENTITIES, AGC Capital
10 Inc., and Troy Wilkinson were not required to pay the loan back unless they had a positive cash
11 flow. There is no record of any payment or income coming back to clients as the result of these
12 loans.

13 80. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS
14 employed a scheme to defraud and engaged in transactions that operated as a fraud by making
15 unexplained and unsubstantiated payments to the MIST ENTITIES, COURTNEY and HOPTAR.

16 81. IA DEFENDANTS used client funds to make payments to COURTNEY and
17 HOPTAR, in the approximate amount of \$72,724.82.

18 82. From June 2010 to November 2010, IA DEFENDANTS made six payments, in the
19 total amount of \$42,600, to one of the MIST ENTITIES. Three out of the six payments are listed as
20 loans, in the sum of \$19,700. Yet there are no promissory notes corresponding to the three loans and
21 no other records explaining the reason for these payments to the MIST ENTITIES.

22 83. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS
23 employed a scheme to defraud and engaged in transactions that operated as a fraud by overstating
24 the value of investments in privately held securities, three of which are affiliated and/or controlled
25 by HALLUM. The investment amounts in the privately held securities, reported in the IFP
26 documents, varied for the same time period.

27 84. As stated earlier, IA DEFENDANTS valued IMMCAP at \$1.2 million, \$1.4 million
28 or \$2 million; one of the MIST ENTITIES at \$2.4 million or \$2.9 million; and THORNTON at

1 \$1.75 million or \$2.9 million. IA DEFENDANTS failed to produce documents substantiating the
2 actual amounts invested in these privately held securities.

3 85. Records produced by IA DEFENDANTS contradict the value assigned to
4 THORNTON. 2008 correspondence from HALLUMS to a third party custodian and clients show
5 THORNTON was valued at zero and considered worthless.

6 86. THORNTON had ceased business and taken a total loss as of December 2006.
7 Despite THORNTON's worthless value, the statements sent to clients reflected that THORNTON
8 had value.

9 87. IA DEFENDANTS further value EAGENCY at \$300,000. As of June 30, 2010,
10 EAGENCY's balance sheet showed that its current liabilities exceeded its current assets by
11 \$916,055. EAGENCY had negative retained earnings and equity, and thus the \$300,000 value
12 reported by IA DEFENDANTS is false.

13 88. Upon information and belief, INNOVATION FUND invested approximately
14 \$200,000 in IMMCAP and the MIST ENTITIES. IMMCAP and the MIST ENTITIES have not
15 generated any revenues.

16 89. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS
17 employed a scheme to defraud and engaged in transactions that operated as a fraud by overstating
18 INNOVATION FUND's value by at least \$3.5 million.

19 90. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS
20 employed a scheme to defraud and engaged in transactions that operated as a fraud by adding
21 inflated advisory fees to the value of INNOVATION FUND.

22 91. The overvaluation of INNOVATION FUND resulted in clients being charged inflated
23 advisory fees for RMC's management of the INNOVATION FUND. As stated before, RMC's
24 advisory fees, in an amount of \$499,089, were never deducted from INNOVATION FUND and
25 instead added only to RMC's position as an investor in the INNOVATION FUND. Because the
26 added advisory fees were not actual growth or increase in the INNOVATION FUND's value,
27 INNOVATION FUND's value was overstated in the amount of \$499,089 as of 2010.

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1 100. Corporations Code section 25237 authorizes the Commissioner to prescribe rules for
2 investment advisers who have custody and control of the clients' securities or funds or who have any
3 power of attorney from their clients to execute transactions. The Commissioner has done so by,
4 among other requirements, prohibiting the violation of fair, equitable and ethical principals under
5 Corporations Code Section 25238.

6 101. California Code of Regulations section 260.238 (h), in pertinent part, prohibits
7 investment advisers and persons associated with investment advisers from misrepresenting to any
8 advisory client, or any prospective advisory client, the nature of the advisory services being offered
9 or fees to be charged for such service, or omitting to state a material fact necessary to make the
10 statements made regarding the services or fees, in light of the circumstances under which they are
11 made, not misleading.

12 102. In violation of California Code of Regulations section 260.238 (h), IA
13 DEFENDANTS misrepresented or omitted to state a material fact about fees for the advisory
14 services. As stated above, IA DEFENDANTS calculated advisory fees based on an overstated
15 INNOVATION FUND value.

16 103. The advisory fees were never deducted from INNOVATION FUND and instead were
17 added only to RMC's position, as an investor in the INNOVATION FUND. Because there was
18 never an actual growth or increase in the INNOVATION FUND, as of 2010, INNOVATION
19 FUND's value was overstated in the amount of \$499,089.

20 104. California Code of Regulations section 260.238 (o), in pertinent part, prohibits
21 investment advisers and persons associated with investment advisers from making any untrue
22 statement of a material fact or omitting a statement of material fact necessary in order to make the
23 statements made, in light of the circumstances under which they are made, not misleading in the
24 solicitation of advisory clients.

25 105. In violation of California Code of Regulations section 260.238 (o), IA
26 DEFENDANTS and HOPTAR failed to disclose to clients that United States Attorney for the
27 District of Nevada charged HOPTAR with conspiracy, money laundering, mail fraud, and securities
28 fraud in 1999. The United States Attorney alleged that HOPTAR engaged in a Ponzi scheme. In or

1 about 2001, HOPTAR pleaded guilty to one felony count of sale of unregistered securities, and was
2 sentenced to probation for a term of 36 months.

3 106. As a condition of his probation, HOPTAR was restricted from engaging in
4 employment, consulting, or any association with any telemarketing or securities and stock sales
5 business. HOPTAR was ordered by the court to notify third parties of risks that may be occasioned
6 by his criminal record or personal history or characteristics.

7 107. In violation of California Code of Regulations section 260.238 (o), HALLUMS and
8 INNOVATION FUND made an untrue statement of a material fact by telling one or all of the
9 prospective or existing clients that INNOVATION FUND would make investments primarily in
10 publicly traded companies.

11 108. INNOVATION FUND invested only a small portion of client funds in publically
12 traded companies.

13 109. IA DEFENDANTS' and HOPTAR's pattern of conduct, as set forth above,
14 demonstrates the necessity for granting injunctive relief restraining such and similar acts,
15 appointment of a receiver, and for ancillary relief.

16 **THIRD CAUSE OF ACTION**
17 **MAINTAINING FALSE AND INACCURATE RECORDS**
18 **(Violations of Corp. Code § 25241 and Cal. Code Regs. §260.241.3)**
19 **(AGAINST DEFENDANTS RMC, HALLUMS, and INNOVATION FUND)**

20 110. Plaintiff incorporates by reference paragraphs 1 through 109 of this Complaint as
21 though fully set forth herein.

22 111. Corporations Code section 25241 authorizes the Commissioner to prescribe rules for
23 investment advisers to make and keep certain specified records and accounts. The Commissioner
24 has done so by specifying, among other requirements, that investment advisers must make and keep
25 true, accurate and current books and records relating to the person's investment advisory business.
26 Those regulations are contained in California Code of Regulations section 260.241.3.

27 112. In violation of Corporations Code section 25241 and California Code of Regulations
28 section 260.241.3, IA DEFENDANTS maintained false and inaccurate books and records.

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1 113. The Department uncovered numerous inaccuracies in IA DEFENDANTS' books and
2 records. The following are examples of IA DEFENDANTS' failure to maintain true and accurate
3 books and records: (a) Contrary to the reported assets, in the amount of \$7,503,306, INNOVATION
4 FUND's Balance Sheet, Income Statement, and General Ledger, as of December 31, 2010, reflect
5 assets in the amount of \$111,821; (b) Contrary to the IFP documents, the values of MIST
6 ENTITIES, IMMCAP, THORNTON, and EAGENCY were not reported on INNOVATION
7 FUND's Balance Sheet and General Ledger as of December 31, 2010; (c) The IFP documents,
8 valuing THORNTON at \$1.75 million and \$2.9 million, are contrary to THORNTON's closure and
9 correspondence previously sent to a third party custodian and clients; (d) The IFP documents,
10 valuing EAGENCY at \$300,000, are contrary to EAGENCY's negative retained earnings and
11 equity; (e) The IFP documents show conflicting values for IMMCAP and MIST ENTITIES, for the
12 same time period in 2010; (f) The discrepancies between INNOVATION FUND's Balance Sheet,
13 Spreadsheet and the IFP documents are irreconcilable; (g) INNOVATION FUND's brokerage
14 trading account at BrokersXpress, LLC was not reported on INNOVATION FUND's Balance Sheet
15 and General Ledger as of December 31, 2010; (h) Six unexplained payments to at least one of the
16 MIST ENTITIES for the period of June 2010 to November 2010 in the sum of \$42,600 are not
17 reconciled to the IFP documents; (i) Three out of six payments are listed as loans; yet, there are no
18 loan documents substantiating these payments; (j) An unexplained mortgage payment, in an amount
19 of \$2,363.54, and a payment to Impulsive Profit, Inc., in an amount of \$50,000, are recorded on the
20 General Ledger; (k) Unverified continual increase in assets and price per share - IA DEFENDANTS'
21 books and records do not include any accounting or schedule that keeps track of any gains or losses
22 to demonstrate how the assets or the price per share have increased over the years; (l) There is a
23 discrepancy between INNOVATION FUND's 2010 schedule of investments and its 2010 Balance
24 Sheet for RMC's position as an investor, in an amount of at least \$1.07 million; (m) Lack of
25 documentation substantiating the amount of clients' funds being invested in the MIST ENTITIES
26 and IMMCAP, in the amount of \$3.6 million; and (n) Unexplained payments to COURTNEY in an
27 amount of \$12,200.

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1 114. IA DEFENDANTS' pattern of conduct, as set forth above, demonstrates the necessity
2 for granting injunctive relief restraining such and similar acts, appointment of a receiver, and for
3 ancillary relief.

4 **FOURTH CAUSE OF ACTION**
5 **KNOWINGLY MAKING UNTRUE STATEMENTS TO THE COMMISSIONER**
6 **(Violations of Corp. Code § 25404)**
7 **(AGAINST DEFENDANT HALLUMS)**

8 115. Plaintiff incorporates by reference paragraphs 1 through 114 of this Complaint as
9 though fully set forth herein.

10 116. Corporations Code section 25404, subdivision (b), states, in pertinent part, that it is
11 unlawful for any person to knowingly make an untrue statement to the commissioner during the
12 course of investigation or examination, with the intent to impede, obstruct, or influence the
13 administration or enforcement of this division.

14 117. In violation of Corporations Code section 25404, subdivision (b), HALLUMS made
15 an untrue statement to the Commissioner during the course of an examination with the intent to
16 impede, obstruct or influence the administration or enforcement of this division. As stated above, in
17 2010, IA DEFENDANTS valued THORNTON at \$1.75 million or \$2.9 million.

18 118. HALLUMS knew that THORNTON was worthless and had no value. In December
19 2006, HALLUMS attended telephonic meetings where THORNTON had discussed its closure and
20 capital losses.

21 119. Further, IA DEFENDANTS' records contradict the value assigned to THORNTON.
22 Yet, in response to the Department's examination, HALLUMS told the Department's examiner that
23 THORNTON is valued at \$2.9 million.

24 120. HALLUMS' pattern of conduct, as set forth above, demonstrates the necessity for
25 granting injunctive relief restraining such and similar acts, appointment of a receiver, and for
26 ancillary relief.

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FIFTH CAUSE OF ACTION
FRAUD BY INVESTMENT ADVISER
(Violations of Corp. Code § 25235 and Cal. Code of Regs. § 260.237)
(AGAINST DEFENDANTS RMC and HALLUMS)

121. Plaintiff incorporates by reference paragraphs 1 through 120 of this Complaint as though fully set forth herein.

122. California Code of Regulations section 260.237 contains rules, and specifies conduct by investment advisers that constitutes fraudulent, deceptive and manipulative practices under Corporations Code section 25235.

123. California Code of Regulations section 260.237, in pertinent part, states that it is considered fraudulent, deceptive, and manipulative conduct for investment advisers to have custody and control over client funds unless:

- (d) the investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of the period, and all debits, credits and transactions in the client's account during the period; and
- (e) all funds and securities of clients are verified by actual examination at least once during each calendar year by an independent certified public accountant or public accountant at a time which shall be chosen by the accountant without prior notice to the investment adviser. A certificate of the accountant stating that such person has made an examination of the funds and securities, and describing the nature and extent of the examination, shall be filed with the Commissioner promptly after each examination.

124. As stated previously, RMC and HALLUMS have custody and control of client funds. IA DEFENDANTS' failed to have clients' funds and securities audited by an independent Certified Public Accountant or a public accountant from 2000 to 2010.

125. HALLUMS admits that there has never been an annual audit or verification of client funds or securities, nor has any filing of these types of reports ever been made with the Department.

126. HALLUMS further admits that he and RMC did not provide itemized financial statements to clients from 2000 to 2010.

127. RMC's and HALLUMS' pattern of conduct, as set forth above, demonstrates the necessity for granting injunctive relief restraining such and similar acts, appointment of a receiver, and for ancillary relief.

1 alleged that HOPTAR engaged in a Ponzi scheme. HOPTAR pleaded guilty to one felony count of
2 Sale of Unregistered Securities.

3 B. On December 14, 2001, Hon. Kent J. Dawson of the United States District Court,
4 District of Nevada, sentenced HOPTAR to probation for a term of 36 months. As a condition of his
5 probation, HOPTAR was restricted from engaging in employment, consulting, or any association
6 with any telemarketing or securities and stock sales business. HOPTAR was ordered by the court to
7 notify third parties of risks that may be occasioned by his criminal record or personal history or
8 characteristics.

9 134. In offering and selling the INNOVATION FUND securities, HALLUMS and
10 INNOVATION FUND made an untrue statement of a material fact to one or all of the prospective
11 investors. The misrepresentation included, without necessarily being limited to, the following:

12 A. INNOVATION FUND would make investments primarily in publicly traded
13 companies. Instead, INNOVATION FUND invested only a small portion of client funds in
14 publically traded companies.

15 135. HALLUMS', INNOVATION FUND's, HOPTAR's, SEGUE's and PACIFIC
16 PHOENIX' pattern of conduct, as set forth above, demonstrates the necessity for granting injunctive
17 relief restraining such and similar acts, continuing the appointment of the Receiver, and for ancillary
18 relief.

19 **SEVENTH CAUSE OF ACTION**
20 **UNJUST ENRICHMENT**
21 **(AGAINST ALL RELIEF DEFENDANTS)**

22 136. Plaintiff incorporates by reference paragraphs 1 through 135 of this Complaint as
23 though fully set forth herein.

24 137. In the manner described above, RELIEF DEFENDANTS received ill-gotten gains,
25 amounting to as much as \$7.5 million, resulting from defendants' unlawful activities.

26 138. RELIEF DEFENDANTS have obtained the funds alleged above under circumstances
27 in which it is not just, equitable or conscionable for them to retain the funds. As a consequence,
28 RELIEF DEFENDANTS have been unjustly enriched.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants RMC CAPITAL MANAGEMENT, INC., a California corporation; BURGESS NATHANIEL HALLUMS, an individual; INNOVATION FUND 2000, LLC, a California limited liability company; SEGUE CAPITAL, INC., a California corporation; PACIFIC PHOENIX COMMUNITIES, LLC, a California limited liability company; DAVID W. HOPTAR, an individual; and DOES 1-10, inclusive; and Relief Defendants IMMCAPNMOTION, INC., a Delaware corporation; MISTNET MEDICAL DEVICES, INC., a Delaware corporation; MAGNETO INERTIAL SENSING TECHNOLOGY, INC., aka, MIST, a Nevada corporation; MIST NET, INC., an entity of unknown form; MIST, INC., an entity of unknown form; THORNTON CAPITAL ADVISORS, INC., a California corporation; DONALD J. COURTNEY, an individual; and WALLACE BENWARD, an individual; and RELIEF DOES 1-10, as follows:

I. INJUNCTIVE RELIEF AGAINST RMC, HALLUMS AND INNOVATION

FUND

Plaintiff seeks a Temporary Restraining Order, eventually an Order of Preliminary Injunction and ultimately, a Permanent Injunction, pursuant to Corporations Code section 25530, subdivision (a), restraining and enjoining Defendants RMC CAPITAL MANAGEMENT, INC., a California corporation; BURGESS NATHANIEL HALLUMS, an individual; and INNOVATION FUND 2000, LLC, a California limited liability company, from:

1. Violating Corporations Code section 25235 by directly or indirectly, engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, including but not limited to, operating a Ponzi scheme, misusing clients funds, and employing fraudulent practices and engaging in transactions that operate as a fraud to the detriment of clients;

2. Violating Corporations Code section 25238 and California Code of Regulations section 260.238 by engaging in investment advisory activities in an unfair, inequitable and unethical manner, including but not limited to failing to disclose material facts about their representative, and misrepresenting or omitting to state a material fact about fees for the advisory services;

3. Violating Corporations Code section 25241 and California Code of Regulations

1 section 260.241.3 by maintaining false and inaccurate books and records;

2 4. Violating Corporations Code section 25404 by knowingly making an untrue
3 statement to the Commissioner during the course of her investigation and examination, with the
4 intent to impede, obstruct, or influence the administration or enforcement of CSL;

5 5. Violating California Code of Regulations section 260.237, by failing to have clients'
6 funds and securities audited and failing to provide itemized statements to clients;

7 6. Violating Corporations Code section 25401 by offering to sell or selling any security
8 of any kind, including but not limited to the securities described in this Complaint, by means of any
9 written or oral communication which includes any untrue statement of material fact or omits or fails
10 to state any material fact necessary in order to make the statements made, in the light of the
11 circumstances under which they are made, not misleading, including but not limited to the
12 misrepresentations and/or omissions alleged in this Complaint;

13 7. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
14 disposing of, in any manner, any books, records, computer programs, computer files, computer
15 printouts, correspondence, brochures, manuals, or any other "writing" or "document" of any kind as
16 defined under California Evidence Code section 250, relating to the transactions and course of
17 conduct as alleged in this Complaint, unless authorized by this Court; and

18 8. Withdrawing from any bank account or disposing of any real or personal property,
19 derived or purchased from clients' funds, in their possession, custody, or control, without leave of
20 the Court.

21 **II. INJUNCTIVE RELIEF AGAINST SEGUE AND PACIFIC PHOENIX**

22 Plaintiff seeks a Temporary Restraining Order, and eventually an Order of Preliminary
23 Injunction and ultimately, a Permanent Injunction, pursuant to Corporations Code section 25530,
24 subdivision (a), restraining and enjoining Defendants SEGUE CAPITAL, INC., a California
25 corporation; and PACIFIC PHOENIX COMMUNITIES, LLC, a California limited liability
26 company, from:

27 1. Violating Corporations Code section 25401 by offering to sell or selling any security
28 of any kind, including but not limited to the securities described in this Complaint, by means of any

1 written or oral communication which includes any untrue statement of material fact or omits or fails
2 to state any material fact necessary in order to make the statements made, in the light of the
3 circumstances under which they are made, not misleading, including but not limited to the
4 misrepresentations and/or omissions alleged in this Complaint;

5 2. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
6 disposing of, in any manner, any books, records, computer programs, computer files, computer
7 printouts, correspondence, brochures, manuals, or any other “writing” or “document” of any kind as
8 defined under California Evidence Code section 250, relating to the transactions and course of
9 conduct as alleged in this Complaint, unless authorized by this Court; and

10 3. Withdrawing from any bank account or disposing of any real or personal property,
11 derived or purchased from clients’ funds, in their possession, custody, or control, without leave of
12 the Court.

13 **III. INJUNCTIVE RELIEF AGAINST HOPTAR**

14 Plaintiff seeks a Temporary Restraining Order, and eventually an Order of Preliminary
15 Injunction and ultimately, a Permanent Injunction, pursuant to Corporations Code section 25530,
16 subdivision (a), restraining and enjoining Defendant DAVID W. HOPTAR, an individual, from:

17 1. Violating Corporations Code section 25238 and California Code of Regulations
18 section 260.238 by engaging in investment advisory activities in an unfair, inequitable and unethical
19 manner; and

20 2. Violating Corporations Code section 25401 by offering to sell or selling any security
21 of any kind, including but not limited to the securities described in this Complaint, by means of any
22 written or oral communication which includes any untrue statement of material fact or omits or fails
23 to state any material fact necessary in order to make the statements made, in the light of the
24 circumstances under which they are made, not misleading, including but not limited to the
25 misrepresentations and/or omissions alleged in this Complaint;

26 3. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
27 disposing of, in any manner, any books, records, computer programs, computer files, computer
28 printouts, correspondence, brochures, manuals, or any other “writing” or “document” of any kind as

1 defined under California Evidence Code section 250, relating to the transactions and course of
2 conduct as alleged in this Complaint, unless authorized by this Court; and

3 4. Withdrawing from any bank account or disposing of any real or personal property,
4 derived or purchased from clients' funds, in their possession, custody, or control, without leave of
5 the Court.

6 **IV. CONSTRUCTIVE TRUST**

7 For a Final Judgment imposing a constructive trust on all funds and properties of RELIEF
8 DEFENDANTS, which are the proceeds, or traceable to the proceeds of the unlawful activities of
9 defendants, in an amount that could be as much as \$7.5 million, or according to proof.

10 **V. RESCISSION, RESTITUTION, AND DISGORGEMENT AS TO RMC,**
11 **HALLUMS, INNOVAITON FUND AND SEGUE**

12 For a Final Judgment requiring Defendants RMC CAPITAL MANAGEMENT, INC.,
13 BURGESS NATHANIEL HALLUMS, INNOVATION FUND 2000, LLC, and SEGUE CAPITAL,
14 INC., and each of them, and such DOES as may be subsequently named, individually, jointly and
15 severally, to:

16 1. Rescind each and all of the unlawful transactions alleged in this Complaint, pursuant
17 to Corporations Code section 25530, subdivision (b), as shall be determined by this Court to have
18 occurred;

19 2. To disgorge and/or pay full restitution to each person determined to have been subject
20 to acts, practices, or transactions which constitute violations of the CSL, in the amount of \$15
21 million or according to proof; and

22 3. To pay the legal rate of interest on the principal amount invested by each and every
23 investor from the date of their investments to the date of judgment herein.

24 **VI. RESCISSION, RESTITUTION, AND DISGORGEMENT AS TO PACIFIC**
25 **PHOENIX**

26 For a Final Judgment requiring Defendant PACIFIC PHOENIX COMMUNITIES, LLC to:

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1 1. Rescind each and all of the unlawful transactions alleged in this Complaint, pursuant
2 to Corporations Code section 25530, subdivision (b), as shall be determined by this Court to have
3 occurred;

4 2. To disgorge and/or pay full restitution to each person determined to have been subject
5 to acts, practices, or transactions which constitute violations of the CSL, in the amount of \$333,041
6 or according to proof; and

7 3. To pay the legal rate of interest on the principal amount invested by each and every
8 investor from the date of their investments to the date of judgment herein.

9 **VII. RESCISSION, RESTITUTION, AND DISGORGEMENT AS TO HOPTAR**

10 For a Final Judgment requiring Defendant DAVID W. HOPTAR to:

11 1. Rescind each and all of the unlawful transactions alleged in this Complaint, pursuant
12 to Corporations Code section 25530, subdivision (b), as shall be determined by this Court to have
13 occurred;

14 2. To disgorge and/or pay full restitution to each person determined to have been subject
15 to acts, practices, or transactions which constitute violations of the CSL, in the amount of \$60,524.82
16 or according to proof; and

17 3. To pay the legal rate of interest on the principal amount invested by each and every
18 investor from the date of their investments to the date of judgment herein.

19 **VIII. CIVIL PENALTIES**

20 For a Final Judgment requiring Defendants RMC CAPITAL MANAGEMENT, INC.,
21 BURGESS NATHANIEL HALLUMS, INNOVATION FUND 2000, LLC, SEGUE CAPITAL,
22 INC., PACIFIC PHOENIX COMMUNITIES, LLC, and DAVID W. HOPTAR, and each of them,
23 and such DOES as may be subsequently named, individually, jointly and severally, to pay the
24 Department \$25,000 as a civil penalty for each act in violation of the CSL, pursuant to Corporations
25 Code section 25535, in the amount of \$875,000 or according to proof.

26 **IX. APPOINTMENT OF A RECEIVER**

27 For said Temporary Restraining Order to further provide (1) for an appointment of a receiver
28 over all entity defendants, all entity relief defendants, and such entity Does and entity Relief Does as

1 may be subsequently named, and their respective subsidiaries, affiliates, partners, agents, employees,
2 representative, successor in interest and assigns, wherever situated, and (2) for an appointment of a
3 receiver over assets and properties of BURGESS NATHANIEL HALLUMS, DAVID W.

4 HOPTAR, and such Does and Relief Does as may be subsequently named, and their respective
5 affiliates, partners, agents, representative, successor in interest and assigns, wherever situated:

6 1. The receiver, prior to entry of his duties, shall take an oath to support the
7 constitutions of the United States and the State of California and shall be bonded according to law.

8 2. The receiver shall be authorized, empowered and directed:

9 a. To take possession of all "Receivership Assets," defined as:

10 i. Any and all real and personal property, investor funds, client funds,
11 collateral, premises, choses in action and other assets, books, records and papers in the possession,
12 custody, or control of RMC CAPITAL MANAGEMENT, INC., BURGESS NATHANIEL
13 HALLUMS, INNOVATION FUND 2000, LLC, SEGUE CAPITAL, INC., PACIFIC PHOENIX
14 COMMUNITIES, LLC, DAVID W. HOPTAR, IMMCAPNMOTION, INC., MISTNET MEDICAL
15 DEVICES, INC., MAGNETO INERTIAL SENSING TECHNOLOGY, INC., aka, MIST, MIST
16 NET, INC., MIST, INC., and THORNTON CAPITAL ADVISORS, INC. (collectively,
17 "Receivership Defendants and Relief Defendants"), or to which Receivership Defendants and Relief
18 Defendants have any right of possession, custody or control, beneficially or otherwise, irrespective
19 of whosoever holds such assets, including all such assets which Receivership Defendants and Relief
20 Defendants carry or maintain, or which may be received during the pendency of this receivership;

21 ii. Distributions, salaries, bonuses, funds, or other forms of compensation
22 which were derived from client funds, in the possession, custody, or control of Receivership
23 Defendants and Relief Defendants to which Defendants have any right of possession, custody or
24 control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such
25 assets which Receivership Defendants and Relief Defendants carry or maintain, or which may be
26 received during the pendency of this receivership;

27 iii. All funds, negotiable instruments, and/or assets held in Bank of
28 America, N.A., account number 24679-01067, in the name of IA Defendants; and

1 iv. All funds, negotiable instruments, and/or assets held in Bank of
2 America, N.A., account numbers ending in 5431, 5971, 4999, 1249, 0561, 6538, and 6595, in the
3 name of defendants and Relief Defendants, in the name of defendants and Relief Defendants,
4 directly or indirectly, and each of them.

5 b. Except for an act of gross negligence, the Receiver shall not be liable for any
6 loss or damage incurred by any of the Receivership Defendants and Relief Defendants, and their
7 owners, officers, directors, shareholders, agents, employees, representatives, salespersons,
8 successors in interest, attorneys, assigns, subsidiaries, affiliates, or any other person, by reason of
9 any act performed or omitted to be performed by the Receiver in connection with the discharge of
10 his duties and responsibilities. For good cause appearing, the receiver's bond is set at \$10,000.

11 c. The Receiver shall have full power to marshal, collect, receive, review,
12 observe, discover, and take charge of all Receivership Assets and all accounts or safe deposit boxes
13 held in the name of Receivership Defendants and Relief Defendants in any financial depositories or
14 other institutions, including, but not limited to all Bank of America accounts, on an ongoing and
15 continual basis pursuant to this Court's order.

16 d. The Receiver may employ other such persons, including accountants,
17 investigators, clerical and professional personnel, counsel, paralegals, and attorneys, to perform such
18 tasks as may be necessary to aid the Receiver in the performance of his duties and responsibilities,
19 only with prior order of the court.

20 e. The Receiver is permitted to employ his in-house staff (secretaries and
21 paralegal) to perform administrative and ministerial work on behalf of the Receivership estate.

22 f. The Receiver may with court approval in advance employ outside attorneys
23 upon further order of this Court to assist the Receiver in the performance of his duties and
24 responsibilities, such employment to be approved by the Court upon ex parte application of the
25 Receiver.

26 g. Periodically, as set forth in paragraphs (g) and (h), below, the Receiver shall
27 report to this Court the results of the collection, receiving, review, observation, discovery and
28 abstracts resulting from the activities of the Receiver as ordered by this Court, and specifically on

1 any commingling of funds, unauthorized use of, or other disposition of assets of whatever
2 description by and between any and each of the Receivership Defendants and Relief Defendants
3 and/or any person, corporation, entity, sole proprietorship, affiliate, or association of whatever type
4 of structure, whether or not said entities are or are not defendants or relief defendants in this action.

5 h. The Receiver shall file, within 30 days of his appointment, an initial inventory
6 of all Receivership Assets, which he shall then have collected, received, reviewed, observed and/or
7 discovered pursuant to this Court's order. Additionally, the Receiver is to file one or more
8 supplemental inventories when and if he shall subsequently come into knowledge of additional items
9 appropriate to the inventory.

10 i. The Receiver shall undertake an independent review into the affairs and
11 transactions of Receivership Defendants and Relief Defendants and file with this Court, within 120
12 days, and every six months thereafter, a report detailing the Receiver's findings of his review of the
13 condition of the Receivership Assets and Receivership Defendants and Relief Defendants, or other
14 affairs and transactions of Receivership Defendants and Relief Defendants, reflecting the existence
15 of any liabilities, both those claimed by others to exist and those to which the Receiver believes to be
16 the legal obligations of each of said Receivership Defendants and Relief Defendants, including a
17 review of any possible conflicts of interest and any further information the Receiver believes may
18 assist in an equitable disposition of this matter, and to include in the report the Receiver's opinion
19 regarding the ability of the Receivership Defendants and Relief Defendants to meet their obligations
20 as they come due, and the Receiver's recommendation regarding the necessity for, and the best
21 method of handling, preserving, or disposing of the Receivership Assets.

22 j. The Receiver may invest the funds of the Receivership Assets in any non-
23 interest-bearing obligations of the United States or in any non-interest-bearing accounts in financial
24 institutions approved by the United States Trustee as an authorized depository for funds of
25 bankruptcy estates, without further order of the Court, and will be the signatory on the bank accounts
26 of Receivership Defendants and Relief Defendants, and each of them, including, but not limited to
27 all of Receivership Defendants and Relief Defendants' Bank of America accounts and any
28 depository or investment account in any financial institution that the Receiver may discover at a later

1 date containing Receivership Assets. If Receivership Assets exceed \$100,000, the Receiver shall
2 deposit the Receivership Assets in an interest-bearing account.

3 k. The Receiver shall bring such proceedings as are necessary to enforce the
4 provisions hereof, including issuance of subpoenas to compel testimony or production of documents
5 as to the existence or location of Receivership Assets or any other information pertinent to the
6 business, financial affairs, or other transactions of Receivership Defendants and Relief Defendant.

7 l. If the Receiver discovers that funds have been transferred from Receivership
8 Defendants and Relief Defendants to other persons or entities, and deems it advisable, the Receiver
9 may extend and expand the receivership over any person or entity holding such funds, without
10 further order of the Court.

11 m. The Receiver shall bring such proceedings as are necessary to modify the
12 provisions hereof, as the Receiver deems appropriate.

13 n. The Receiver shall make such payments and disbursements from the funds of
14 the Receivership Assets so taken into possession, custody, and control of the Receiver or otherwise
15 received by him, as may be necessary and advisable in discharging his duties as receiver, without
16 further order of the Court, including, without limitation, the payment of interim compensation to the
17 Receiver and persons or entities under paragraphs (d) and (e), above, subject to the provisions of
18 paragraphs (z) and (aa), below.

19 o. The Receiver shall carry on any lawful business activities of Receivership
20 Defendants and Relief Defendants, to preserve Receivership Assets, and to foreclose and/or actively
21 seek and negotiate with potential buyers, assignees, or other parties who may be interested in
22 acquiring, purchasing, leasing, subleasing, or renting Receivership Assets and to sell, lease, sublease
23 or rent Receivership Assets, subject to Court approval.

24 p. The Receiver shall institute, prosecute, defend, compromise, intervene in and
25 become a party, either in his own name or in the name of Receivership Defendants and Relief
26 Defendants, to such suits, actions, or proceedings as may be necessary for the protection,
27 maintenance, recoupment, or preservation of the Receivership Assets in his custody, in his
28 discretion, without further order of the Court.

1 q. The Receiver shall divert, take possession of, and secure all mail of
2 Receivership Defendants and Relief Defendants, in order to screen such mail, retaining so much as
3 relates to the business of Receivership Defendants and Relief Defendants, and forwarding to the
4 individual or other appropriate addresses so much as is not, in the Receiver's opinion, appropriate
5 for retention by him, and to effect a change in the rights to use any and all post office boxes and
6 other mail collection facilities used by Receivership Defendants and Relief Defendants.

7 r. Upon the Receiver's appointment, the Receiver shall undertake an immediate
8 review of all readily available Receivership Assets in order to determine the economic viability of a
9 receivership. Upon such review, if the Receiver determines that sufficient Receivership Assets are
10 readily available to fund the receivership, then the Receiver shall file such finding with the Court,
11 and the receivership shall continue until further order of the Court. If upon initial review the
12 Receiver determines that readily available funds are insufficient to maintain the receivership, then
13 the Receiver shall so notify the Court, and may request that the Court dissolve the receivership, or
14 modify the duties and responsibilities of the Receiver and Receivership Defendants and Relief
15 Defendants, and Plaintiff will not oppose such request, it being understood that the Receiver and
16 professionals employed by the Receiver shall not be expected to perform services unless readily
17 available assets exist to pay the expenses of the receivership.

18 s. The Receiver shall cooperate fully with the California Department of
19 Corporations or other regulatory agencies having jurisdiction over matters relating to the conduct of
20 business of Receivership Defendants and Relief Defendants so as not to impair the ability of said
21 regulatory agencies to perform their duly authorized investigative and enforcement duties.

22 t. Any regulatory agency having jurisdiction over matters relating to
23 Receivership Defendants and Relief Defendants' business shall be permitted to review, without
24 exception, all reports of the Receiver and all books, records and files of Receivership Defendants
25 and Relief Defendants at any time during normal business hours, with reasonable notice, and to
26 make any abstracts or copies of said documents as it desires, provided that nothing herein shall
27 waive or abrogate any applicable attorney-client or other legally recognized privilege.

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1 u. The Receiver’s powers shall be in addition to, and not by way of limitation of,
2 the powers described in California Corporations Code section 25530, subdivision (a), California
3 Government Code section 13975.1 and California Code of Civil Procedure section 564 *et seq.*

4 v. The Receiver shall be vested with, and is authorized, directed, and empowered
5 to exercise, all of the powers of Receivership Defendants and Relief Defendants, their owners,
6 officers, directors, shareholders, general partners or persons who exercise similar powers and
7 perform similar duties; and that Receivership Defendants and Relief Defendants, their owners,
8 officers, directors, shareholders, agents, employees, representatives, successors in interest, attorneys
9 in fact, and all persons acting in concert or participating with them, are hereby divested of, restrained
10 and barred from exercising any of the powers vested herein in the Receiver.

11 w. Receivership Defendants and Relief Defendants, including, but not limited to
12 their owners, officers, directors, shareholders, agents, employees, representatives, salespersons,
13 successors in interest, attorneys, assigns, subsidiaries, affiliates, and any other persons or entities
14 under their control and all persons or entities in active concert or participation with Receivership
15 Defendants and Relief Defendants, and all persons owing a duty of disclosure to Receivership
16 Defendants and Relief Defendants, and each of them, shall cooperate with the Receiver in his
17 investigation and shall immediately turn over to the Receiver Receivership Assets, books, records,
18 papers, documentations, charts, and/or descriptive material of all Receivership Assets, owned
19 beneficially or otherwise, and wherever situated, and all books and records of accounts, title
20 documents, and other documents in the possession or under their control, which relate, directly or
21 indirectly, to the Receivership Assets.

22 x. Except by leave of this Court and during the pendency of this receivership, all
23 clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons
24 or entities seeking relief of any kind, in law or in equity, from Receivership Defendants and Relief
25 Defendants and Receivership Assets, and all others acting on behalf of any such persons, including
26 sheriffs, marshals, agents, employees, and attorneys are hereby restrained and enjoined, directly or
27 indirectly, with respect to Receivership Defendants and Relief Defendants and Receivership Assets,
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- i. Commencing, prosecuting, continuing, or enforcing any suit or proceeding, including arbitration, except by motion before this Court;
- ii. Executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien;
- iii. Commencing or continuing judicial or non-judicial foreclosure proceedings or proceedings for the appointment of a receiver;
- iv. Creating, perfecting, or enforcing any lien or encumbrance;
- v. Accelerating the due date of any obligation or claimed obligation;
- vi. Exercising any right of set-off;
- vii. Taking, retaining, retaking, or attempting to retake possession;
- viii. Withholding or diverting any rent or other obligations;
- ix. Using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien; and
- x. Doing any act or thing whatsoever to interfere with the control of, the possession of, or management by, the Receiver herein, or to, in any way, interfere with or harass the Receiver or to interfere in any manner during the pendency of this proceeding, the discharging of the Receiver's duties and responsibilities, and with the exclusive jurisdiction of this Court.

y. Any and all provisions of any agreement entered by and between any third party and Receivership Defendants and Relief Defendants, including, by way of illustration, but not limited to, the following types of agreements (as well as any amendments or modifications thereto), mortgages, partnerships agreements, financial guarantee bonds, joint venture agreements, promissory notes, remarketing agreements, loan agreements, security agreements, indemnification

1 agreements, subrogation agreements, subordination agreements, deeds of trust, pledge agreements,
2 assignments of rents and other collateral, financing statements, letters of credit, leases, insurance
3 policies, guarantees, escrow agreements, management agreements, real estate brokerage and rental
4 agreements, servicing agreements, consulting agreements, easement agreements, license agreements,
5 franchise agreements, construction contracts, or employment contracts that provide in any manner
6 that the selection, appointment, or retention of a Receiver or trustee by any court, or the entry of an
7 order such as hereby made, shall be deemed to be, or otherwise operate as a breach, violation, event
8 of default, termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or
9 liquidation, shall be stayed, and the assertion of any and all rights and remedies relating thereto shall
10 also be stayed and barred, except as otherwise ordered by this Court, and this Court shall retain
11 jurisdiction over any causes of action that have arisen or may otherwise arise under any such
12 provision.

13 z. Receivership Defendants and Relief Defendants are responsible for the
14 payment of costs, fees, and expenses of Receiver incurred in connection with the performance of his
15 duties, including the costs, fees, and expenses of those persons who may be engaged or employed by
16 the Receiver to assist him in carrying out his duties and obligations. The Receiver, the Receiver's
17 employees and agents, and professionals employed by the Receiver are entitled to monthly payment
18 of interim compensation for services rendered, at their normal hourly rate, and monthly
19 reimbursement for all expenses incurred by them on behalf of the receivership estate, and the
20 Receiver is authorized to make such payments without further order of the Court. Within 10 days
21 after such monthly payments, the Receiver shall serve written notice upon the counsel of record for
22 Receivership Defendants and Relief Defendants and Plaintiff of the amount paid to each payee, with
23 an itemization of the services rendered or expenses incurred.

24 aa. Interim monthly fees paid shall be subject to review and approval by the
25 Court, on a quarterly basis. This Court retains jurisdiction to award a greater or lesser amount as the
26 full, fair, and final value of such services. In the event that extraordinary services are performed by
27 the Receiver, or any professionals employed by the Receiver, the Court may approve extraordinary
28 compensation to such persons.

1 ab. Neither Plaintiff, the State of California, the California Corporations
2 Commissioner, the California Department of Corporations, nor any officer, employee, or agent
3 thereof shall have any liability for the payment, at any time, for any such fees or expenses in
4 connection with said receivership.

5 ac. That Receivership Defendants and Relief Defendants, their owners, officers,
6 directors, shareholders, agents, employees, representatives, successors in interest, attorneys, and any
7 other persons shall not take any action or purport to take any action, in the name of or on behalf of
8 any Receivership Defendants and Relief Defendants or any of their subsidiaries and affiliates,
9 without the written consent of the Receiver or order of this Court.

10 ad. That Receivership Defendants and Relief Defendants and their subsidiaries
11 and affiliates and their owners, officers, directors, shareholders, agents, employees, representatives,
12 successors in interest, and attorneys, shall cooperate with and assist the Receiver and shall take no
13 action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the
14 conduct of his duties or interfere in any manner, directly or indirectly, with the custody, possession,
15 management, or control by the Receiver of the Receivership Defendants and Relief Defendants and
16 Receivership Assets, as described above.

17 ae. Receivership Defendant and Relief Defendant shall, within 10 days of the
18 entry of the appointment, prepare and deliver to the Receiver and Plaintiff a detailed and complete
19 schedule of all of their real and personal properties, and other assets, with a minimum value of
20 \$1,000, including a description of the source of funds for the purchase of such assets. For purposes
21 of this Order, the term “assets” shall include, but is no way limited to, income/compensation or right
22 of income/compensation from any source, and any financial or controlling interest in any business
23 entity, including, but not limited to, a partnership, trust, corporation, or limited liability company.
24 Such accounting shall be filed with the Court and a copy shall be delivered to the Receiver. After
25 completion of the accounting, each Receivership Defendant and Relief Defendant shall produce to
26 the Receiver at a time agreeable to the Receiver, all books, records and other documents supporting
27 or underlying his accountings.

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XI. OTHER RELIEF

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

Dated: May 2, 2012

JAN LYNN OWEN
California Corporations Commissioner

By: _____
AFSANEH EGHBALDARI
Corporations Counsel
Attorney for the People of California