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14
15 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

16
17 Shela Camenisch and Dale Dean; Luna
Baron; and Eva King, Individually and as
18 Trustee of the Eva M. King Trust,
individually and on behalf of all others
19 similarly situated,

20 Plaintiffs,

21 v.

22 Umpqua Bank,

23 Defendant.
24

Case No. 3:20-cv-5905-RS

**FIRST AMENDED CLASS ACTION
COMPLAINT
AND DEMAND FOR JURY TRIAL**

1 **INTRODUCTION**

2 1. For the last several decades, Ken Casey has offered investors safe, steady returns backed
3 by Marin County commercial real estate. When Casey died suddenly in May, however, it quickly
4 became apparent that his investment business was actually a long-running Ponzi scheme likely to cost
5 investors more than \$100 million.

6 2. There was nothing particularly clever or original about Casey's Ponzi scheme. It would
7 have been obvious to anyone with access to Casey's financials. Casey was raising hundreds of millions
8 of dollars from mostly local mom and pop investors, by promising returns that income from the
9 properties couldn't cover. To make the promised interest payments and fund Casey's lavish lifestyle,
10 the business was depositing money from new investors into company accounts and then using those
11 funds to pay previous investors and for Casey's personal benefit.

12 3. Casey's Ponzi scheme was so obvious that within a month of his death, the scheme was
13 publicly exposed, the SEC had opened an investigation, and the business had to suspend monthly
14 payments to existing investors due to inadequate funds.

15 4. Someone did have a clear view of Casey's financials far earlier—Umpqua Bank, the
16 financial institution where Casey maintained every account he used to operate his multi-decade Ponzi
17 scheme. But rather than expose Casey's fraudulent business, Umpqua chose to profit from it.

18 5. Plaintiffs Shela Camenisch, Dale Dean, Luna Baron, and Eva King were among those
19 investors who have lost their savings as a result of Casey's Ponzi scheme and Umpqua Bank's knowing
20 participation in that scheme. Casey's investment companies are now in bankruptcy and will not be able
21 to make full restitution. But on behalf of themselves and other investors like them, Plaintiffs seek to
22 hold Umpqua liable for aiding and abetting Casey's Ponzi scheme and require it to make amends to the
23 scheme's victims.

24 **PARTIES**

25 6. Plaintiffs Shela Camenisch and Dale Dean are citizens and residents of Richmond,
26 Virginia. They were previously long-time residents of the San Francisco Bay Area who learned about
27 Ken Casey and his investment business from friends in the area.

28 7. Plaintiff Luna Baron is a citizen and resident of Santa Cruz, California.

1 8. Plaintiff Eva King is a citizen and resident of Walnut Creek, California. King is also the
2 sole trustee of the Eva M. King Trust.

3 9. Defendant Umpqua Bank is community bank organized and chartered in Oregon, with
4 its principal place of business in Portland, Oregon.

5 **JURISDICTION**

6 10. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2)
7 because this is a class action in which the amount in controversy exceeds \$5,000,000, exclusive of
8 interest and costs; in the aggregate, there are more than 100 members in the proposed class; and at least
9 one class member is a citizen of a state different from Defendant.

10 11. The Court also has subject matter jurisdiction under 28 U.S.C. § 1332(a) because
11 Plaintiffs and Umpqua are citizens of different states and the matter in controversy exceeds \$75,000.

12 **INTRADISTRICT ASSIGNMENT**

13 12. Assignment to the San Francisco Division or Oakland Division is appropriate because
14 the Ponzi scheme at issue in this litigation was devised and orchestrated in Marin County. Ken Casey
15 was a resident of Marin County, Casey’s companies were headquartered in Marin County, and almost
16 all of the real property Casey and his companies offered as collateral is located in Marin County—
17 including the real property used as collateral for Plaintiffs’ investments. In addition, Umpqua Bank
18 maintains branches in Marin County, from which it did business with Casey and aided and abetted his
19 Ponzi scheme.

20 **FACTUAL ALLEGATIONS**

21 **A. Ken Casey’s Ponzi Scheme**

22 13. Ken Casey is a former accountant who, in 1997, was convicted of 21 counts of bank
23 fraud, five counts of tax evasion, five counts of filing false income tax return, and one count of
24 conspiracy to defraud the United States. He was sentenced to 18 months in prison and lost his license to
25 practice public accountancy.

26 14. When Casey died on May 6, 2020, the executor of his estate learned that Casey’s
27 criminal activity did not stop in 1997. Casey also operated a decades-long Ponzi scheme through which
28 he defrauded more than 1,000 victims—most of them Bay Area residents—out of hundreds of millions

1 of dollars.

2 15. Casey ran his Ponzi scheme through two related companies—Professional Financial
3 Investors, Inc. (PFI) and Professional Investors Security Fund, Inc. (PISF). Casey founded PISF in
4 1983 and served as its sole shareholder, officer, and director until his death. He founded PFI in 1990
5 and served as its sole officer, director, and shareholder until 1998, when he relinquished his corporate
6 positions and placed his shares in an irrevocable trust for his ex-wife, Charlene Albanese. Casey
7 continued to exercise *de facto* control over PFI until his death.

8 16. Through PFI and PISF, Casey used investor money to personally enrich himself and to
9 build a reputation as a prominent businessman, adventurer, and philanthropist. At the time of his death,
10 PFI and PISF owned interests in about 70 real properties worth more than \$550 million and Casey was
11 reputed to be the largest commercial property owner in Marin County.

12 17. The victims of Casey's Ponzi scheme invested in PFI and PISF's real property through
13 various mechanisms, including through loans secured by junior deeds of trust in the property, loans
14 secured by PISF's interest in limited partnerships that owned the property, and by purchasing
15 membership in LLCs that owned the property.

16 18. Investors were promised steady returns at above-market rates in exchange for their
17 contributions and were told that those returns would be paid from the real property's rental income and
18 capital appreciation.

19 19. In fact, existing investors were paid in large part through new investors' contributions—
20 the hallmark of a Ponzi scheme. Casey's Ponzi scheme was so reliant on new investor money that it
21 could not persist for even one month following his death.

22 20. After Casey passed, Ms. Albanese hired an attorney at a small Marin County law firm to
23 help transition ownership of the business. At the very outset of the attorney's review of PFI and PISF's
24 finances, it was apparent Casey's businesses lacked sufficient cash flow to meet their monthly
25 obligations and had been unlawfully diverting new investors' money to pay previous investors.

26 21. Payments to investors were ceased and Ms. Albanese directed the companies to alert
27 governmental authorities, including the Securities Exchange Commission, about Casey's criminal
28 activity. Investors were informed of both developments on June 4, 2020.

1 22. Since then, PISF has been forced into involuntary bankruptcy by some of its investors
2 and a managing director at one of the largest independent accounting and business consulting firms in
3 the United States was hired to serve as the Chief Restructuring Officer for PFI—which then voluntarily
4 commenced bankruptcy proceedings of its own.

5 23. After commissioning valuations from a real estate brokerage, the Chief Restructuring
6 Officer reports that PFI and PISF’s real estate holdings are worth approximately \$555 million; the
7 outstanding debt on those properties, including debt owed to commercial lenders and one group of
8 investors, is believed to total more than \$400 million; and PISF appears to owe more than \$250 million
9 to other investors.

10 24. In other words, even after all efforts are made to return as much value as possible to
11 investors, Casey’s Ponzi scheme is likely to cost investors \$100 million or more.

12 **B. Umpqua Bank Aided and Abetted Casey’s Ponzi Scheme**

13 25. Casey’s Ponzi scheme only succeeded for so long because Casey was able to limit
14 access to PFI and PISF’s financials. Among the select few who did have access was Defendant
15 Umpqua Bank.

16 26. Umpqua is required by law to conduct extensive customer due diligence, especially for
17 high-risk and high-net worth customers like Casey. These “know your customer” obligations are
18 ongoing and required Umpqua to familiarize itself with Casey, the nature of PFI and PISF’s operations,
19 the source and legitimacy of their funds, and the purpose of their bank accounts and ongoing financial
20 transactions.

21 27. Umpqua was also required to monitor PFI and PISF’s accounts for “red flags” indicative
22 of potential fraud—a particular risk for companies associated with Casey, who had pled guilty to
23 multiple instances of financial fraud—and to report suspicious activity to governmental authorities.

24 28. In the course of performing its customer due diligence obligations, Umpqua learned that
25 Casey was operating a Ponzi scheme, using deposits from new investors to pay existing investors, and
26 using investor deposits to pay Casey’s personal expenses.

27 29. Umpqua’s knowledge of Casey’s Ponzi scheme was an inevitable consequence of
28 several factors that made the scheme obvious to someone in Umpqua’s position:

1 a. All of PFI and PISF's bank accounts were Umpqua accounts, giving Umpqua a full view
2 of the companies' financials.

3 b. Casey's companies were among Umpqua's largest clients in this region, having raised
4 hundreds of millions of dollars from investors, making their activities highly visible to Umpqua.

5 c. Casey was a convicted felon who had pled guilty to numerous counts of financial fraud,
6 which drew further scrutiny to his financial enterprise.

7 d. Casey kept close control over the management of PFI and PISF—a highly unusual
8 arrangement for an investment company of that size, which would normally employ a comprehensive
9 management structure with multiple executives.

10 e. Casey also kept close control over PFI and PISF's bank accounts—another highly
11 unusual arrangement for such a large investment business, which would normally have many account
12 signatories.

13 f. PFI and PISF did not use outside accounting firms to manage or audit its finances and
14 never provided Umpqua with independent audit reports.

15 g. PFI and PISF did not provide Umpqua with copies of any SEC filings and had not
16 registered its investment offerings with the SEC or filed for an exemption.

17 h. PFI and PISF were not filing the appropriate forms to perfect investors' security interests
18 and were not providing Umpqua with copies of those forms.

19 i. PFI and PISF's investment offerings were secured by collateral with little to no value, as
20 the existing encumbrances on PFI and PISF's real property holdings exceeded their value.

21 j. PFI and PISF's bank accounts showed that the companies required a regular influx of
22 new investor money to meet the companies' monthly obligations.

23 k. PFI and PISF's bank accounts showed that money deposited from new investors were
24 being commingled with other investors' funds, were being used to pay existing investors, and were
25 being used to pay Casey's personal expenses.

26 l. Casey's Ponzi scheme was so obvious to someone with access to PFI and PISF's bank
27 accounts, it was discovered almost immediately after his death. Payments to existing investors had to
28 be suspended within a month and the companies were forced into bankruptcy.

1 invested with Casey for years and had always received her monthly payments. King wanted to place a
2 small sum of money she inherited from her mother and her savings from years of working as a
3 hairdresser in a safe investment.

4 39. Between September 16, 2019, and April 2, 2020, King invested \$194,300: \$75,000
5 through her personal trust (Eva M. King Trust) and \$119,300 through her self-directed IRA.

6 40. The form of each investment was a straight note signed by Casey as president of PISF.
7 The notes contemplated monthly interest payments at the rate of 9% per year and pledged repayment of
8 the full principal and all interest owing within 5 years.

9 41. Casey also executed a related security agreement as President of PISF, under which he
10 pledged PISF's interests in certain limited partnerships as collateral.

11 **Luna Baron**

12 42. Plaintiff Luna Baron also learned of Casey and his investment business from a friend.
13 Baron wanted to place a sum of money she inherited from her mother as well as some insurance
14 proceeds she received from losing her property in a fire in a safe investment.

15 43. Between January 16, 2013 and November 14, 2019, Baron invested \$170,000: \$70,000
16 in deeds of trust and \$100,000 in limited liability companies (Professional Investors 44, LLC and
17 Professional Investors 48, LLC).

18 44. The deeds of trust were supposed to be secured by buildings that Casey's companies
19 owned in Marin County, and were renewable after five years. The LLC investments were supposed to
20 give Baron membership interests in PFI companies that owned particular buildings, and were supposed
21 to provide her with at least 6% interest per year (paid quarterly) as well as a return on her principal
22 with additional gains from the buildings' appreciation in value once the buildings were sold.

23 45. Camenisch, Dean, Baron, and King did not know that they were investing in a Ponzi
24 scheme. They did not know that their investments were being used—with Umpqua Bank's assistance—
25 to make monthly payments to previous investors. They did not know that the collateral for their
26 investments was worthless or nearly worthless. And they did not know that PISF did not have sufficient
27 capital to pay its monthly obligations to them without an influx of money from new investors.

28 46. Casey withheld all of this information from Plaintiffs with an intent to defraud them—

1 just as he had withheld similar information from prior investors. Had Plaintiffs known any of this
2 information, they never would have invested their savings with Casey or PISF.

3 47. As a result of Casey's fraud, Plaintiffs have lost a substantial portion of their
4 investments. They received only some monthly payments before Casey died, his Ponzi scheme was
5 quickly discovered, and monthly payments to investors were suspended. PFI and PISF are now in the
6 midst of joint bankruptcy proceedings and do not have sufficient assets to fully repay Plaintiffs the
7 principal amount of their investments.

8 CLASS ACTION ALLEGATIONS

9 48. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs seek to pursue
10 their claims on behalf of a class of similarly situated persons. The parameters of the class may be
11 refined through discovery and will be subject to Court approval and modification, but for purposes of
12 this complaint, Plaintiffs propose the following class definition:

13 All persons who invested money with and/or loaned money to Kenneth J.
14 Casey, Professional Financial Investors, Inc. and/or Professional Investors
15 Security Fund, Inc.

16 49. Plaintiffs further propose that the following persons be excluded from any certified
17 class: Defendant, its current or former officers, directors, legal representatives, employees; any and all
18 parent companies, subsidiaries, affiliates, predecessors, successors, or assigns of Defendant,
19 Professional Financial Investors, Inc., Professional Investors Security Fund, Inc., or Kenneth J. Casey;
20 and all judicial officers and associated court staff assigned to this case and their immediate family
21 members.

22 50. The proposed class meets the requirements for class certification pursuant to Rule 23(a)
23 and Rule 23(b)(3).

24 51. *Numerosity*: The class is sufficiently numerous such that individual joinders are
25 impracticable. The Chief Restructuring Officer for PFI and PISF reports estimates the number of direct
26 victims of Casey's Ponzi scheme at approximately 1,000, and the number of additionally affected
27 investors who had their investments co-mingled with ill-gotten gains at approximately 500.

28 52. *Commonality*: Plaintiffs' and class members' claims against Umpqua present common

1 questions of law and fact, including:

- 2 a. what Umpqua learned about Casey's Ponzi scheme and when it learned it?
- 3 b. whether the information Umpqua knew about Casey's Ponzi scheme constitutes actual
- 4 knowledge under the law of aiding and abetting?
- 5 c. what transactions or other activities Umpqua performed for Casey and his companies?
- 6 d. whether Umpqua's activities constitute substantial assistance under the law of aiding and
- 7 abetting?

8 53. *Typicality*: Plaintiffs' claims against Umpqua Bank are typical of the class's claims.

9 Plaintiffs and class members were all victims of Casey's Ponzi scheme, each has claims against
10 Umpqua Bank for aiding and abetting that scheme, and each claim will depend on common proof that
11 Umpqua Bank knew about Casey's Ponzi scheme and substantially assisted.

12 54. *Adequacy*: Plaintiffs are members of the class and will fairly and adequately protect its
13 interests. Plaintiffs' interests are aligned with those of the class, as each seeks to recover from Umpqua
14 Bank for aiding and abetting the Ponzi scheme that caused them financial harm.

15 55. *Predominance*: The common questions identified above are likely to predominate at trial
16 when compared to any individualized issues that may arise. The major issues upon which Umpqua's
17 liability depends—namely, whether Umpqua had actual knowledge of Casey's Ponzi scheme and
18 substantially assisted—are each susceptible to generalized proof that would establish Umpqua's
19 liability as to all class members through a single trial.

20 56. *Superiority*: A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy. Successfully prosecuting class members' claims is likely to require
22 intensive discovery of a \$24 billion financial institution, review of large amounts of electronically
23 stored information, and hiring of financial experts to explain and interpret the significance of both
24 Casey's and Umpqua's records. These are matters that are best handled through unified class-wide
25 representation, which can be conducted on a contingency basis and offers class members economies of
26 scale unavailable in individual proceedings. A class action also has the benefit of comprehensive
27 supervision by a single court and will avoid the risk of inconsistent results.

28

1 **FIRST CAUSE OF ACTION**

2 **Aiding and Abetting Fraud**

3 57. Plaintiffs allege this cause of action on behalf of themselves and the proposed class, and
4 in so doing, incorporate all preceding allegations.

5 58. Plaintiffs and class members were each victimized by the Ponzi scheme orchestrated by
6 Ken Casey. Casey solicited and accepted investments from Plaintiffs and class members with the intent
7 to defraud them. Casey did not tell Plaintiffs or class members that their investments were being
8 used—with Umpqua Bank’s assistance—to make monthly payments to previous investors. Nor did
9 Casey tell Plaintiffs or class members that his investment companies lacked sufficient capital to meet
10 their obligations to investors unless they continued to solicit and receive money from new investors.

11 59. Defendant Umpqua Bank aided and abetted Casey’s Ponzi scheme and is accordingly
12 liable for the damage caused to Plaintiffs and class members. As previously alleged, Umpqua learned
13 of Casey’s Ponzi scheme in the course of performing its customer-due-diligence obligations and gave
14 substantial assistance to the Ponzi scheme.

15 60. As a result of Umpqua’s aiding and abetting of fraud, Plaintiffs and class members have
16 been damaged in an amount to be determined at trial.

17 **SECOND CAUSE OF ACTION**

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

19 61. Plaintiffs allege this cause of action on behalf of themselves and the proposed class, and
20 in so doing, incorporate all preceding allegations.

21 62. Casey owed Plaintiffs and his other investors a fiduciary duty, which he breached by
22 enlisting them in a Ponzi scheme whereby he used their investments to pay previous investors and to
23 personally enrich himself.

24 63. Umpqua Bank knew the nature of Casey’s business, including that he solicited and
25 accepted investments and owed his investors a fiduciary duty to act with the utmost good faith and in
26 the best interests of those investors.

27 64. Umpqua also knew that Casey was breaching his fiduciary duty. As previously alleged,
28 Umpqua learned of Casey’s Ponzi scheme in the course of performing its customer-due-diligence

1 obligations. Yet instead of exposing the Ponzi scheme, Umpqua substantially assisted Casey in
2 operating the scheme and breaching his fiduciary duty to Plaintiffs and class members.

3 65. As a result of Umpqua's aiding and abetting of Casey's breach of his fiduciary duty,
4 Plaintiffs and class members have been damaged in an amount to be determined at trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs respectfully request the following relief on behalf themselves and all
7 others similarly situated:

- 8 A. A determination this lawsuit may be maintained as a class action
9 B. An award of damages in an amount to be determined at trial
10 C. Pre-judgment interest and post-judgment interest, as provided by law
11 D. Attorneys' fees and expenses, including expert fees
12 E. Such other relief as the Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a jury trial for all claims so triable.

15 Dated: June 30, 2021

16 /s/ Michael Schrag
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