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5 Attorneys for Plaintiffs, VIRGINIA PADILLA; LISA MARIE PADILLA, TRUSTEE OF THE PADILLA  
6 FAMILY TRUST; DON LOGAN, TRUSTEE OF THE P & K BROWN FAMILY TRUST; KATHERINE  
ANNE BROWN; DAGMAR CHAPLIN-LEE,

7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 VIRGINIA PADILLA; LISA MARIE PADILLA, )  
11 TRUSTEE OF THE PADILLA FAMILY TRUST; DON )  
12 LOGAN, TRUSTEE OF THE P & K BROWN FAMILY )  
13 TRUST; KATHERINE ANNE BROWN; DAGMAR )  
CHAPLIN-LEE, )

14 Plaintiffs, )

15 vs. )

16 )  
17 FRANK WINGER, an Individual; AIM WINGER )  
CORPORATION, a California Corporation; AIM )  
18 WINGER LLC, a California Limited Liability )  
Company; AIM ASSOCIATION, a Business Entity )  
19 form unknown, )

20 Defendants. )

Case No.

**COMPLAINT FOR DAMAGES BASED ON:**

1. **AIDING AND ABETTING VIOLATION OF INVESTMENT COMPANY ACT OF 1940 [15 U.S.C. § 80A-1 ET SEQ. ];**
2. **AIDING AND ABETTING VIOLATION OF THE SECURITIES ACT OF 1933, [15 U.S.C. § 77I(a)(2)];**
3. **FRAUD; and**
4. **BREACH OF FIDUCIARY DUTY NEGLIGENCE**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs, Virginia Padilla, Lisa Marie Padilla, Trustee Of The Padilla Family Trust,  
2 Katherine Anne Brown, Don Logan, Trustee Of The P & K Brown Family Trust, and Dagmar  
3 Chaplin-Lee allege the following against Frank Winger, an individual, Aim Winger Corporation,  
4 a California Corporation, a Aim Winger LLC, a California Limited Liability Company and Aim  
5 Association, a business entity form unknown:  
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8 **PRELIMINARY STATEMENT**

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10 1. This action concerns a scheme by Brian Smart, an insurance agent employed by  
11 the defendants, all registered investment advisers based in Orange County, California, to  
12 transfer approximately \$1.65 Million of funds held by the plaintiffs, elderly widows, out of safe,  
13 secure insurance products or FDIC insured certificates of deposit into a highly speculative fund  
14 founded by Brian Smart and Smart Assets, LLC, named the 'Smart Assets Fund', which was a  
15 ponzi operating that resulted in the total loss of the financial holdings of the elderly plaintiffs.  
16

17 2. Brian Smart was hired an insurance agent in 2000 by his father in law,  
18 Defendant, Frank Winger. Frank Winger is the principal owner of each of the investment  
19 adviser defendants. Brian Smart was able to win the confidence and trust of the elderly  
20 plaintiffs, Virginia Padilla, Katherine Logan Brown, and Dagmar Chaplin in his capacity as an  
21 agent of the investment adviser defendants. Starting in 2003, and touting the expertise of the  
22 defendants in investments and the alleged safety of its investment plans, Brian Smart  
23 succeeded in persuading each of the plaintiffs to transfer all of their funds from safe, secure  
24 investments in annuities or FDIC insured certificates of deposit into his 'Smart Assets Fund',  
25 which Brian Smart pitched as a safe, investment grade fund. The Smart Assets Fund was  
26 actually a Ponzi scheme operated by Brian Smart to pay the personal expenses of his family,  
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1 consisting of his wife, Kelli Smart, the daughter of Defendant, Frank Winger, and Brian and  
2 Kelli Smart's five children, the grandchildren of Defendant, Frank Winger. Each of the plaintiffs  
3 who invested funds with Brian Smart, Smart Assets, LLC and or the Smart Assets Fund lost  
4 their entire investment, (save and except small amounts paid to them by Brian Smart for a  
5 period of time as 'withdrawals' or 'dividends' upon their request, until Smart Assets' funds  
6 were exhausted). The full extent of the Ponzi scheme was revealed by the United States  
7 Securities and Exchange Commission in a civil enforcement action entitled, *Securities and*  
8 *Exchange Commission v. Brian Smart, Smart Assets, LLC*, United States District Court, District of  
9 Utah, Case No. 2:09-CV-0024-DAK.  
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11

12 3. Frank Winger became concerned about his son-in-law's business practices and  
13 purported to terminate his employment in 2005. However, rather than visit with each of the  
14 various clients served by Brian Smart to assess his handling of their who had looked to the  
15 defendants for investment advice, instead, the defendants gave critical aid, support, and cover  
16 to Brian Smart after purporting to terminate him which enabled Smart to set up Smart Assets,  
17 LLC, maintain the trust of the plaintiffs, and complete his control over their investment funds.  
18 For approximately two years after defendants terminated Brian Smart, they provided him with  
19 an office in their office suite, which included telephone, fax, copier, reception, conference  
20 room, mail, and other support services. Brian Smart continued to promote himself as an  
21 associate or affiliate of the defendants through use of the fictitious business name 'A.I.M. –  
22 Smart', with the knowledge of the Defendants, and thus was able to lead plaintiffs to believe  
23 that he was still working with in some capacity for the defendants years after his termination.  
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26 4. In hiring Brian Smart, training him, providing him with leads and clients, the  
27 Defendants were responsible for supervising his activities and therefore knew, or in the  
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1 exercise of due diligence should have known, Brian Smart was not providing proper  
2 investment advice to the Plaintiffs but was instead attempting to take personal control of their  
3 assets for his gain by promoting his Smart Assets Fund. Despite actual or constructive  
4 knowledge that Brian Smart was attempting to take and taking personal custody of the  
5 plaintiffs' funds through his Smart Assets Fund, which was not an insurance company or  
6 investment grade security, Defendants failed to take any action to warn their clients or alert  
7 authorities as to activities of Brian Smart and Smart Assets, LLC.  
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10 5. Plaintiffs are informed and believe that Defendants failed to take any actions to  
11 protect their clients or alert authorities because Brian Smart was the son-in-law of Defendant,  
12 Frank Winger, the principal owner of the defendants, and was providing financial support for  
13 Frank Winger's daughter and grandchildren.

14  
15 6. Through the activities alleged in this Complaint: (i) Defendants aided and  
16 abetted Brian Smart and Smart Assets, LLC in fraud in the offer or sale of securities, in violation  
17 of Section 17(a) of the Securities Act of 1933 ("Securities Act"), and aided and abetted  
18 fraudulent or deceptive conduct in connection with the purchase or sale of securities, in  
19 violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule  
20 10b-5 thereunder; (ii) Defendants aided and abetted Brian Smart and Smart Assets, LLC in  
21 fraudulent or deceptive conduct with respect to investment advisory clients, in violation of  
22 Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), and  
23 fraudulent or deceptive conduct by a registered investment adviser, in violation of Section  
24 206(4) of the Advisers Act and Rule 206(4)-2(a)(2) thereunder; and (iii) aided and abetted Brian  
25 Smart and Smart Assets, LLC's violations of their record-keeping requirements under Section  
26 204 of the Advisers Act and Rule 204-2(a)(3) thereunder.  
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1 (The "Padilla Trust") was established by a Declaration, dated March 5, 2005, and the settlor  
2 thereof is Virginia Padilla. The Padilla Trust was established in contemplation of the advancing  
3 age and death of Virginia Padilla, and the need to provide for her care as an elderly person.  
4 Under its terms, Virginia Padilla is the initial beneficiary thereof. Lisa Marie Padilla is the  
5 current Trustee of the Padilla Trust.  
6

7 12. Defendant, FRANK WINGER, is an individual residing within the Central District  
8 of California and County of Orange.

9 13. Defendant, AIM WINGER CORPORATION is a corporation duly organized and  
10 existing under the laws of the State of California with its principal place of business in the  
11 County of Orange, California. Plaintiffs are informed and believe and based thereon allege,  
12 that Aim Winger Corporation is not currently in good standing and has been suspended by the  
13 Secretary of State of the State of California, and thus may not lawfully conduct business within  
14 the State of California.  
15

16 14. Defendant, AIM WINGER, LLC is a limited liability company duly organized and  
17 formed under the laws of the State of California with its principal place of business in the  
18 County of Orange, California.  
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20 15. Defendant, AIM ASSOCIATION, is a business entity form unknown doing  
21 business in the County of Orange, State of California under such name and the name, 'AIM  
22 ASSOCIATES'. The true form of business entity of such defendant will be alleged by  
23 amendment as soon as same is ascertained.  
24

25 16. Plaintiffs are informed and believe and based thereon allege that Defendant  
26 Frank Winger ("Winger") is either the sole owner or majority owner of all of the outstanding  
27 shares of capital stock, the sole owner or majority owner of all of the membership interests,  
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1 and the sole owner or majority owner of all of the partnership interests or beneficial interests,  
2 in all of the defendants named herein that are corporations, limited liability companies,  
3 partnerships, joint ventures or comparable business entities. Plaintiff is informed and believes,  
4 and thereon alleges, that each and every Defendant herein named, whether by their true  
5 names or other fictitious names, was at all times set forth herein acting as the agent and/or  
6 employee of each other Defendant herein named, and at all times herein mentioned was  
7 acting within the scope of such agency and/or employment when such party engaged in these  
8 wrongful acts or omissions hereinafter set forth. In that all named defendants were under  
9 common ownership and were part of a group of entities owned and/or under the control of  
10 defendant Frank Winger, such entities shall be referred to from time to time, collectively, as  
11 the "AIM Group".  
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### 14 III. COMMON ALLEGATIONS

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17 17. Plaintiffs allege on information and belief that, at all times herein mentioned,  
18 each of the entities named herein as Frank Winger, Aim Winger LLC, Aim Winger Corporation,  
19 AIM Association, and AIM Associates (collectively "AIM Group") held himself/itself out as a  
20 person or entity licensed by the Department of Insurance of the State of California to sell  
21 insurance products and investments. At all times herein mentioned, the principal business of  
22 the entities comprising the AIM Group was the operation of an insurance brokerage business,  
23 marketing life insurance and similar insurance products, duly licensed to act as such by the  
24 Department of Insurance of the State of California. At all times herein mentioned the entities  
25 comprising the AIM Group were in contractual relationships with various insurance companies  
26 underwriting and issuing life insurance and annuity products, for which they were  
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1 compensated by means of commissions which were based in part or wholly upon the  
2 premiums payable upon such insurance products. In connection with their business, the  
3 entities comprising the AIM Group acted through employees or purportedly independent  
4 agents, and the entities comprising the AIM Group had entered into contractual arrangements  
5 with such employees or agents whereby they would be compensated for their services in  
6 having sold insurance products by being paid a substantial portion of the commissions payable  
7 to the entities comprising the AIM Group by the insurance companies which underwrote and  
8 issued such insurance products.  
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10  
11 18. In addition to sales of life insurance and annuity products, the entities comprising  
12 the AIM Group also held themselves and their agents and employee out as investment  
13 advisers, who were competent and qualified to render advice to clients with regard to  
14 investment of their funds into investment products not within the categories of life insurance  
15 and annuities, but instead constituting securities, investment contracts, fractional interests in  
16 commercial real property, and similar products. By reason thereof, the entities comprising the  
17 AIM Group were and are investment advisers, as defined in the Investment Advisers Act, 15  
18 U.S.C. Sec. 80b, et seq., which in Sec. 80b-2(a)(11) defines an investment adviser" as "any  
19 person who, for compensation, engages in the business of advising others, either directly or  
20 through publications or writings, as to the value of securities or as to the advisability of  
21 investing in, purchasing, or selling securities, or who, for compensation and as part of a regular  
22 business, issues or promulgates analyses or reports concerning securities".  
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25 19. Commencing in or before 2000, and continuing up to approximately January,  
26 2005, the persons and entities comprising the AIM Group engaged the services of Brian J.  
27 Smart ("Smart") as an agent for the sale of insurance products and investments. Plaintiffs are  
28

1 informed and believe and based thereon allege that the services of Smart were purportedly  
2 terminated by the entities comprising the AIM Group in 2005 but that for a period of  
3 approximately two years after such termination, the entities comprising the AIM Group  
4 permitted Smart to maintain an office the AIM Group's place of business and hold himself out  
5 as one of their agents through his use of the fictitious business name "A.I.M. – Smart". The  
6 Defendants allowed Smart to continue to represent to Plaintiffs while he maintained his office  
7 at offices of the entities comprising the AIM Group in Anaheim, California, and allowed him to  
8 use their phone and fax lines, copier, reception, mail and conference room. Numerous  
9 meetings between Plaintiffs and Smart, at which Smart solicited investments by Plaintiffs, took  
10 place at the AIM Group's offices in Anaheim. At one of said meetings at said office, Frank  
11 Winger was introduced by Smart to Plaintiff, Katherine Brown as "my boss", and Frank Winger  
12 did not contest such characterization, thereby further reinforcing Katherine's belief that when  
13 dealing with Smart, she was dealing with the entities comprising the AIM Group . By reason  
14 thereof, the entities comprising the AIM Group allowed a situation to arise whereby persons  
15 dealing with Smart believed that he was an authorized agent of the entities comprising the AIM  
16 Group and that when they were dealing with Smart, they were the beneficiaries of the  
17 expertise and resources of the entities comprising the AIM Group .  
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22 20. All checks from Plaintiffs that were used to purchase investment or insurance  
23 products were made payable to "AIM" or a variation thereof and deposited into accounts  
24 which stood in the name of AIM or entities using a similar name, thereby further reinforcing  
25 Plaintiff's belief that when they were dealing with Smart, it was in his capacity as an agent for  
26 AIM.  
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28 21. On a date unknown to Plaintiffs, but believed to be in or about 2007, Smart

1 moved from California to Utah. However, he continued to act as a purported agent or  
2 employee of the entities comprising the AIM Group

3 22. On or about November 4, 2004, Smart caused an entity known as "Smart Assets  
4 LLC" ("Smart Assets") to be organized under the laws of the State of California. Smart Assets  
5 was used as a vehicle by Smar to divert funds which Smart had obtained from the victims of  
6 his fraudulent activities. At all times herein mentioned, Smart controlled all aspects of the  
7 business operations and finances of Smart Assets, LLC and was its sole manager and member.  
8

9 23. On October 19, 2009, Brian Smart has filed a voluntary petition for relief under  
10 Chapter 7 of the Bankruptcy Code commencing the case entitled *In Brian Jared Smart*,  
11 U.S.C.B., District of Utah, Case No. 09-31462, which case is still in progress. By reason of the  
12 automatic stay against proceedings in any other court, Plaintiffs cannot include Smart and  
13 Smart Assets, LLC as defendants in this action. Certain of the Plaintiffs have filed an adversary  
14 complaint seeking to have their claims against Smart declared to be non-dischargeable on a  
15 number of grounds. Said adversary action remains pending in the Bankruptcy Court.  
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18 24. Since approximately 2000 and continuing through 2007, Smart directly and also  
19 through his entity, Smart Assets, LLC, misappropriated at least \$1.70 million of investors' funds  
20 in a Ponzi-like scheme through the use of misstatements and omissions. Smart solicited client  
21 money by holding himself out as an insurance salesman and financial planner employed by the  
22 AIM Group. Smart persuaded clients of the AIM Group to transfer funds from annuities and  
23 and certificates of deposit into the Smart Assets Fund, or purchase purported promissory notes  
24 paying high fixed rates of return.  
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26 25. Throughout, Smart assured investors that their money would be invested in safe  
27 and secure investments. In reality, investors' monies were used for Smart's personal expenses,  
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1 speculative real estate investments, hard money loans and equity investments in high risk  
2 companies, and finally to pay investors who had requested small withdrawals in order to  
3 create the impression that his fund was solvent or profitable. In order to prolong his deceptive  
4 scheme, Smart gave investors false account statements and product information sheets, and  
5 wrote them emails describing fictitious investments in undisclosed mutual funds. Smart failed  
6 to keep records of investors funds and commingled business and personal funds.

8           26. Plaintiffs, Katherine Anne Brown and the Brown Trust invested approximately  
9 \$325,000 with Smart and Smart Assets between 2000 and 2005 and Paul Brown. In 2000, the  
10 Browns purchased an annuity with Transamerica from Smart for \$100,000. In or about 2003,  
11 Smart persuaded the Browns to cash out the Annuity and provide the funds to Smart himself to  
12 invest. In April 2003, Smart convinced Katherine to give him more money to invest, advising  
13 her that he would invest that money in investment products that would provide steady income  
14 for retirement. In reliance thereon, she transmitted an additional \$80,000 to Smart by a check  
15 payable to AIM. Thereafter, during or about the year 2005, Smart convinced Katherine to  
16 invest an amount in excess of \$145,000 with him, by representing to Katherine that the money  
17 would be invested in an "S & P" Index mutual fund and other securities, and by telling  
18 Katherine that such investment was "a very safe investment."  
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22           27. In order to further his scheme and deception, Smart gave Katherine fabricated  
23 account statements on the letter head Smart Assets Fund and Smart Assets, LLC that  
24 misstated, inter alia, the balance of her account and the interest rate earned on her account,  
25 and of the existence of the various types of funds and accounts listed. The account statements  
26 gave the appearance that Katherine's money was held in a separately managed account and  
27 invested in securities offering fixed rates of return. Smart also furnished Katherine with  
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1 fabricated product information sheet describing the non-existent Smart Assets, LLC product  
2 "Sale Guard VI," which stated that "[c]lients can realize above average returns without risking  
3 loss of principal" and that it is "[designed for clients primarily interested in a fixed rate  
4 strategy."  
5

6 28. In fact, Katherine's money was not used as Smart represented, and was not held  
7 in a separate account, but instead was pooled with the money of other investors in a single  
8 account held by Smart Assets, of which Smart was the manager and sole member. The money  
9 was then used for Smart's personal expenses, speculative investments in real estate or real  
10 estate loans, hard money loans and equity investments in high risk companies, and to pay back  
11 other investors who wanted to make a withdrawal.  
12

13 29. During the course of their relationship, and in furtherance of his ongoing  
14 fraudulent scheme, Smart asked Katherine to refer other potential investors to him, assuring  
15 her that if she did so, he would place those potential investors into safe investments  
16 comparable to those into which he represented he had invested Katherine's funds. From time  
17 to time, Katherine received "dividend" payments from Smart. Katherine is informed and  
18 believes and based thereon alleges, that the payments came from the Smart Assets bank  
19 account where the investor money was pooled, and that the payments to her were made from  
20 moneys obtained by Smart from new investors, again as part of the Ponzi scheme. No  
21 payments were received after August 2008, and the total of the payments received by her  
22 represented a mere fraction of the total amount invested with Smart. When the payments  
23 ceased, Katherine repeatedly requested account information and money from Smart, but  
24 Smart has not satisfied these requests. Katherine finally realized during or about the month of  
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1 June 2009, that she had been defrauded and that Smart did not intend to return any of her  
2 funds to her.

3           30. In or about June, 2005, as a result of Smart's requests that she refer friends to  
4 him so that he could assist them in investing their funds, Brown referred one of her friends,  
5 Dagmar Chaplin-Lee ("Dagmar "), to Smart so that he could provide her with financial planning  
6 services. Dagmar had recently inherited approximately \$250,000 from her father's estate.  
7 Dagmar was by profession an artist, who had never earned or accumulated any material  
8 amount of funds in excess of what was needed to meet her ordinary and ongoing living  
9 expenses, had no idea as to where to turn for advice as to how to invest the newly-inherited  
10 funds, and had asked Katherine if she had any recommendation concerning a financial adviser.  
11 Shortly after Katherine recommended Smart to Dagmar , Smart met with her at the AIM office  
12 in Anaheim, and by November of 2005, he had convinced her to invest \$200,000 of her money  
13 in the form of a check payable to "AIM", by telling her: (1) that he would be putting the money  
14 in "safe" investments; (2) that she would always have immediate access to all of her money; (3)  
15 that he was going to make both Katherine and Dagmar "millionaires"; and, (4) that he was still  
16 affiliated with AIM. Smart even advised Dagmar that because he wanted to make sure that she  
17 was "comfortable" with the investment, he was entering into a "promissory note agreement"  
18 with Dagmar Chaplin-Lee , and in connection therewith he gave her a "membership certificate"  
19 falsely purporting to give her 200,000 units of membership in Smart Assets, LLC. The note  
20 promised a fixed interest rate of 8.5% per year. In addition, Smart told Dagmar that to provide  
21 her with additional assurance that her funds were safe, he was assigning a \$870,000 secured  
22 promissory note, held by Smart, as security for repayment of her investment. However, Smart  
23 did not disclose to Dagmar Chaplin-Lee that this note was in default and property which  
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1 allegedly secured the note was not valuable. From time to time thereafter, Smart thereafter  
2 provided Dagmar Chaplin-Lee with fabricated account statements purporting to reflect the  
3 value of her accounts with Smart Assets, LLC but which contained fraudulent mis-statements,  
4 which were intended to create the appearance that her money was held in a separately-  
5 managed account and invested in securities paying an annual interest rate of 20.65%. Due to  
6 Dagmar Chaplin-Lee 's lack of prior experience in investing and lack of financial sophistication,  
7 she did not realize that these representations were suspect. In February 2006, based on  
8 Smart's continued representations to her that any funds that she invested with him would be  
9 "safe", adequately collateralized, and obtain a high rate of return, Dagmar gave Smart  
10 another \$50,000, representing the entire remaining balance of the \$250,000 that she had  
11 inherited from her father. Smart assured her that this would be invested in a safe, secure  
12 promissory note offering an 18% annual interest rate. Despite his representations set forth  
13 hereinabove, neither Dagmar 's initial \$200,000 investment nor her subsequent \$50,000  
14 investment were used as Smart represented, but instead, and contrary to his representations  
15 in that regard, her funds were not held in a separate account but was pooled with other  
16 investors' money, and was used for highly speculative investments, Smart's personal expenses,  
17 and to pay other investors.

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22 31. In February 2008, Smart told Dagmar Chaplin-Lee that she and Katherine  
23 Brown's assets were invested in what he described as "a Hawaiian real estate deal". However,  
24 approximately a month later, Smart told Dagmar Chaplin-Lee that they were invested in a  
25 company called "Pharma Meds". Rather than placing Plaintiffs' funds in safe, liquid  
26 investments, Smart used their funds and moneys from other investors to make highly  
27 speculative investments in real estate and companies, to make hard money loans, for his own  
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1 personal use, and to pay previous investors. Smart pooled investor money into a single bank  
2 account held in the name of Smart Assets. Smart transferred \$114,091 in investor money from  
3 his Smart Assets bank account to his personal checking account. Much of this money was used  
4 for personal and family expenses. Smart used his Smart Assets bank account check card for:  
5 \$40,183 in personal credit card payments; \$16,728 in retail purchases; \$17,757 in personal  
6 mortgage expenses; \$2,762 for restaurants; \$2,367 for gas; \$2,109 for hotels; \$1,606 for car  
7 rentals; \$1,426 for phone bills; and \$6,245 in other personal expenses. Smart used investor  
8 money to pay for his wife's personal expenses. From the Smart Assets bank account, Smart  
9 wrote checks to Kelly Smart totaling \$26,400, and made \$3,012 in payments to her personal  
10 credit card. Smart withdrew approximately \$1.2 Million from his Smart Assets, LLC bank  
11 account. This money was used for personal expenses, investment in real estate, to make "hard  
12 money" loans, and to invest in failed companies. Smart wired approximately \$460,000 from his  
13 Smart Assets bank account for use in highly speculative investments in real estate and  
14 companies. The bulk of this money went to American Enterprise Investment Services, Inc.,  
15 Fuerte Real Estate Investment Group, Golden Key Investments, Metro National Title Trust, Jake  
16 Consulting Tnt., and First Guarantee Capital. From this account, Smart made payments to  
17 various investors, transferred money to his personal checking account, made sizeable  
18 withdrawals for personal use, on at least one occasion, wrote a check to his wife Kelly Smart  
19 for \$23,000, paid his personal mortgage expenses and his and his wife's personal credit cards,  
20 and paid various other personal expenses.

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25 32. Without their knowledge and consent, Smart also used Plaintiffs' funds to invest  
26 in real estate, including money to purchase a property in Coalville, Utah. Smart used investor  
27 money to make highly speculative investments in start up companies. Smart teamed up with a  
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1 firm known as Golden Key Investments ("Golden Key") to invest in a slurry manufacturer called  
2 Vision Natural. Golden Key eventually failed after one of the principals of Vision Natural  
3 purportedly absconded with investor funds. Smart never told investors that the investment in  
4 Vision Natural was lost. In addition, Smart also used investor monies to make failed  
5 investments in high risk companies named "Pharma Meds" and "McFarland & Hullinger".  
6 Smart also attempted to purchase real estate in Draper and Park City, Utah and Maui, Hawaii,  
7 and in connection therewith expended investor funds. Plaintiffs are unaware of the exact  
8 amount of their own funds used for such purposes due to the failure of Smart to provide an  
9 accounting therefor, but will show the amount at time of trial herein.  
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12 33. Plaintiffs are informed and believe and based thereon allege, that all or nearly  
13 all of the over \$1.7 Million given to Smart by various investors to invest on their behalf,  
14 including the funds which he received from Plaintiffs, has been dissipated by Smart and is  
15 unavailable for distribution to the investors. Plaintiffs are informed and believe and based  
16 thereon allege, that Smart did not track, record, or monitor the status of money he collected  
17 from his clients.  
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19 34. On or about June 5, 2009, Smart was deposed in the civil case commenced by  
20 the SEC and asserted his Fifth Amendment privilege against self incrimination with regard to  
21 numerous questions touching several subjects that incriminated him personally, including the  
22 following: (1) the Smart account statements given to investors; (2) the product information  
23 sheets given to investors; (3) the promissory notes that he sold to investors; (4) the  
24 membership certificate that he gave to Dagmar ; (5) what he told investors when soliciting  
25 their investments; (6) how he invested investor money; and (7) how he otherwise used  
26 investor money. Specifically, Smart asserted the Fifth Amendment when questioned regarding:  
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1 (1) whether he told investors he was going to invest their money in safe, principal guaranteed  
2 investments; (2) whether he made misstatements to investors when soliciting their money; (3)  
3 whether he used investor money for his own personal use; (4) whether he used investor  
4 money to invest in real estate; (5) whether he used investor money to invest in hard lending;  
5 (6) whether he misled investors regarding how he was going to use their money; (7) whether  
6 he commingled investor money in a single account; (8) whether he gave investors false and  
7 misleading account statements; (9) whether he gave investors false and misleading product  
8 information sheets; (10) whether he paid some investors with other investors' money; (11)  
9 whether he caused investors to think that he was affiliated with AIM after he left AIM; (12)  
10 whether he routinely misled investors regarding the status of their investments; (13) whether  
11 he transferred investor money into his personal checking account; (14) whether he used  
12 investor money to pay his mortgage; (15) whether he used investor money to pay his personal  
13 credit cards; (16) whether he used investor money to issue a \$23,000 check to his wife; and  
14 (17) whether he orchestrated a scheme to defraud investors. However, at this deposition he  
15 admitted that approximately \$870,000 of Padilla's money was used to make a failed "hard  
16 money" loan. Smart did not return any money to Virginia Padilla who lost approximately \$1  
17 Million invested with Smart.  
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22 35. From the inception through the end of their business relationship, Dagmar gave  
23 Smart approximately \$250,000 to invest. From the inception of their business relationship  
24 through August 2008, Smart paid Dagmar distributions which totaled approximately \$52,500,  
25 which he variously advised were "dividends" or "interest" upon the funds invested with her.  
26 The payments came from the same Smart Assets bank account that Plaintiffs subsequently  
27 discovered were the account into which the investor money was pooled. These payments to  
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1 Dagmar ceased during or about September 2008. Despite repeated requests that Smart  
2 provide account information on her investments and advise why she has not received any  
3 payments since August 2008, Dagmar has not received any such information. The difference  
4 between the amount invested and the amount of "dividends" or "interest" received by Dagmar  
5 is approximately \$200,000, which does not take into consideration the amount of dividends or  
6 interest which would have been earned if prudently invested.  
7

8           36. From the inception through the end of their business relationship, Katherine  
9 gave approximately \$325,126 to Smart to invest for her. From the inception of their business  
10 relationship through August 2008, Smart paid Katherine distributions which totaled  
11 approximately \$88,180, which he variously advised were "dividends" or "interest" upon the  
12 funds invested with her. The payments came from the same Smart Assets bank account that  
13 Plaintiffs subsequently discovered were the account into which the investor money was  
14 pooled. These payments to Katherine ceased during or about September 2008. Despite  
15 repeated requests that Smart provide account information on her investments and advise why  
16 she has not received any payments since August 2008, Katherine has not received any such  
17 information. The difference between the amount invested and the amount of "dividends" or  
18 "interest" received by Katherine is \$236,945, which does not take into consideration the  
19 amount of dividends or interest which would have been earned if prudently invested.  
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23           37. In 2004, an AIM Group client referred Virginia Padilla to the AIM Group and  
24 Smart. Smart met with Virginia Padilla and her daughter, Lisa Marie Padilla who became  
25 Trustee of her mother's trust. Thereafter, Smart prepared a financial plan for the Padilla's  
26 which represented to be very solid and safe, and not too flashy. He initially stated that the  
27 funds would be placed in an annuity and then moved to low risk, fixed funds offering a  
28

1 principal guarantee. Smart stated that he had located an appropriate fixed fund offering a rate  
2 of 5.5% percent per annum for twelve to twenty four months. He stated that he would place  
3 another portion of the funds, \$425,000, with a company called Golden Key Investments that  
4 would make interest payments of \$3,000 to the Padillas each month after 90 days. Golden Key  
5 Investments did not invest bonds, mutual funds or securities traded on a national exchange,  
6 but instead real estate investments that were not exempt from registration and were not  
7 registered as securities. In 2005, Virginia Padilla and Lisa Marie-Padilla transferred  
8 approximately \$1.1 Million to Smart for investment purposes. From the inception of their  
9 business relationship through August 2008, Smart paid Virginia Padilla distributions which  
10 totaled approximately \$62,000, which he variously advised were "dividends" or "interest"  
11 upon the funds invested with her. Despite repeated requests that Smart provide account  
12 information on her investments and advise why she has not received any payments since  
13 February, 2008, Virginia Padilla has not received any such information. The difference between  
14 the amount invested and the amount of "dividends" or "interest" received by Virginia Padilla is  
15 \$1,000,000, which does not take into consideration the amount of dividends or interest which  
16 would have been earned if prudently invested.  
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22 **FIRST CLAIM FOR RELIEF**

23 **Plaintiffs, Katherine Anne Brown and Don Logan, Trustee of**  
24 **the Brown Trust against all AIM Group Defendants for Aiding**  
25 **and Abetting Violation of Investment Advisers Act By Smart and**  
26 **Smart Assets, LLC**  
27  
28

1           38.     Plaintiffs, Katherine Anne Brown and Don Logan, Trustee of the Brown Trust ,  
2 (collectively "Brown") reallege and incorporate by reference paragraphs 1 through 37,  
3 inclusive, as if set forth at length herein.  
4

5           39.     Under the relevant provision of the Investment Advisers Act, i.e., 15 U.S.C. Sec.  
6 80b-6, the following practices on the part of any investment adviser are all declared to be  
7 unlawful:

- 8                   (1)     to employ any device, scheme, or artifice to defraud any  
9 client or prospective client;  
10
- 11                   (2)     to engage in any transaction, practice, or course of  
12 business which operates as a fraud or deceit upon any client or  
13 prospective client;  
14
- 15                   (3)     acting as principal for his own account, knowingly to sell  
16 any security to or purchase any security from a client, or acting as  
17 broker for a person other than such client, knowingly to effect any  
18 sale or purchase of any security for the account of such client,  
19 without disclosing to such client in writing before the completion  
20 of such transaction the capacity in which he is acting and obtaining  
21 the consent of the client to such transaction. The prohibitions of  
22 this paragraph shall not apply to any transaction with a customer of  
23 a broker or dealer if such broker or dealer is not acting as an  
24 investment adviser in relation to such transaction.  
25
- 26                   (4)     to engage in any act, practice, or course of business which is  
27 fraudulent, deceptive, or manipulative.  
28

1  
2           40. The acts and omissions of Smart and Smart Assets, LLCs, as alleged hereinabove,  
3 directly violated the foregoing statutory provisions.  
4

5           41. The AIM GROUP defendants aided and abetted those violations by failing to  
6 supervise Smart and restrain him. Frank Winger was at all times the principal, officer and or  
7 manager with day-to-day responsibility for overseeing Smart's activities. Winger and the AIM  
8 Group defendants knew or were grossly negligent and reckless in failing to ascertain that Smart  
9 was not providing appropriate investment advice to clients and failed to take any action other  
10 than firing Smart in 2005, but only after Smart had persuaded Brown to transfer all of their  
11 assets to Smart's personal control or under his control in Smart Assets, LLC. Thereafter, the  
12 Defendants failed to warn Plaintiff, Brown of Smart's breaches of fiduciary duty, violations of  
13 the act, and fraud in fulfilling his duties as an investment adviser. Based on the foregoing,  
14 Winger and the AIM Group Defendants willfully or in a consciously reckless manner aided and  
15 abetted and caused violations of Section 206(2) of the Advisers Act.  
16  
17

18           42. Defendants failed reasonably to supervise Smart with a view towards preventing  
19 his violations by placing him in a position of responsibility with respect to clients such as  
20 Brown, without proper training and without establishing adequate procedures to ensure that  
21 he was making financial planning recommendations that were appropriate for the plaintiffs'  
22 ages and financial circumstances. Defendants devoted inadequate resources to ensure  
23 compliance with the Investment Advisers Act and failed to implement adequate control  
24 mechanisms.  
25

26           43. As a direct and foreseeable result of the violation of the foregoing provisions of  
27 the Investment Advisers Act, Plaintiff, Brown has sustained direct economic damages, the  
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1 exact amount of which is as yet unknown to her but will be shown at trial, and constituting an  
2 amount not less than \$1,000,000. In addition, Brown is entitled to restitution of all fees,  
3 whether disclosed or undisclosed, either paid by her to Defendants or deducted by them from  
4 any funds received from her as fees or similar consideration for their purported rendering of  
5 investment advisory services, the amount of which is currently unknown but will be shown at  
6 time of trial herein.  
7

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9  
10 **SECOND CLAIM FOR RELIEF**

11 **Aiding and Abetting Violation of Securities Act of 1933 By**  
12 **Plaintiffs, Katherine Anne Brown and Don Logan, Trustee of**  
13 **the Brown Trust against all Defendants**  
14

15  
16 44. Plaintiffs, Katherine Anne Brown and Don Logan, Trustee of the Brown Trust ,  
17 (collectively "Brown"), reallege and incorporate by reference paragraphs 1 through 37,  
18 inclusive, and 39 through 43, inclusive, as if set forth at length herein.

19 45. Under the following relevant provision of the Securities Act of 1933, i.e., 15  
20 U.S.C. § 77I(a)(2), the following practices on the part of any person selling securities, or offering  
21 securities for sale, are all declared to be unlawful and a remedy for such unlawful acts is  
22 provided:  
23

24 (2) offers or sells a security (whether or not exempted by the provisions  
25 of section 77c of this title, other than paragraphs (2) and (14) of subsection (a)  
26 of said section), by the use of any means or instruments of transportation or  
27 communication in interstate commerce or of the mails, by means of a  
28

1 prospectus or oral communication, which includes an untrue statement of a  
2 material fact or omits to state a material fact necessary in order to make the  
3 statements, in the light of the circumstances under which they were made, not  
4 misleading (the purchaser not knowing of such untruth or omission), and who  
5 shall not sustain the burden of proof that he did not know, and in the exercise  
6 of reasonable care could not have known, of such untruth or omission, shall be  
7 liable, subject to subsection (b) of this section, to the person purchasing such  
8 security from him, who may sue either at law or in equity in any court of  
9 competent jurisdiction, to recover the consideration paid for such security with  
10 interest thereon, less the amount of any income received thereon, upon the  
11 tender of such security, or for damages if he no longer owns the security.  
12  
13

14 46. The acts of Smart and Smart Assets, LLC hereinabove set forth violated the  
15 aforesaid provision of the Securities Act of 1933, as amended.  
16

17 47. The acts of Defendants, Frank Winger and the AIM Group hereinabove set forth  
18 caused and or knowingly provided substantial assistance to Smart and Smart Assets, LLC's  
19 violations of the above provision of the of the Securities Act of 1933, as amended.  
20

21 48. As a direct and foreseeable result of the violation of the foregoing provisions of  
22 the Securities Act, Brown has sustained direct economic damages, the exact amount of which  
23 is as yet unknown to her but will be shown at trial, and constituting an amount not less than  
24 approximately \$1,000,000  
25  
26

27 **THIRD CLAIM FOR RELIEF**  
28

1                   **Fraud By Plaintiffs, Katherine Anne Brown and Don Logan,**  
2                   **Trustee of the Brown Trust against all Defendants**

3           49.     Plaintiffs, Katherine Anne Brown and Don Logan, Trustee of the Brown Trust ,  
4 (collectively "Brown") reallege and incorporate by reference paragraphs 1 through \_\_\_\_,  
5 inclusive, as if set forth at length herein.  
6

7           50.     The acts of defendants herein named constituted a fraudulent course of  
8 conduct as against Katherine Brown. In particular, Smart, acting as the actual, ostensible or  
9 apparent agent of each and every named defendant herein, made the representations  
10 hereinabove set forth in order to induce Katherine to entrust the funds in question with him;  
11 knew that the representations were materially false at the time they were made; made them  
12 with the intent that they would be relied upon; and made them with the intent to deprive  
13 Katherine of the funds entrusted by her in order to enrich himself at her expense. Katherine  
14 did not know that such representations by Smart were false either when they were made or  
15 when she entrusted her funds to Smart, and justifiably relied upon such representations.  
16  
17

18           51.     As a direct and foreseeable result of the aforesaid fraudulent course of conduct,  
19 Katherine has sustained direct economic damages, the exact amount of which is as yet  
20 unknown to her but will be shown at trial, and constituting an amount not less than  
21 \$1,000,000.  
22

23           52     As a direct and foreseeable result of the aforesaid fraudulent course of conduct,  
24 Katherine has lost her savings and retirement income which caused her to sustain severe  
25 emotional distress, all to her general damage in such amount as may be shown at time of trial.  
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1 her assets, and to explain to Brown the practical impact and potential risks of the investments,  
2 investment programs and overall course of dealing in which Defendants were engaged.

3           57. Defendants also were under a duty not to recommend, or pursue investments  
4 in, securities or other products that were unsuitable for Brown in light of her financial  
5 situation, needs and investment objectives -- which at all times Defendants understood to be  
6 to preserve her capital, generate a reasonable income annually, and enable Katherine to  
7 maintain her modest standard of living and pay for medical expenses without becoming a  
8 burden upon surviving members of her family.

9  
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11           58. By engaging in the reckless and unsuitable acts set forth hereinabove with  
12 regard to investment of her funds, Defendants breached their fiduciary duties to Brown by,  
13 among other things, disregarding Brown's stated investment objectives and financial needs;  
14 failing to exercise requisite care in selecting appropriate investments for's Brown assets; failing  
15 to invest Brown's assets in stable, secure, income-producing securities, and instead investing  
16 Brown's assets in high-risk, speculative products; failing to disclose all material facts concerning  
17 investment decisions to Brown; failing to inform Brown of the risks associated with such  
18 investments; falsely assuring Brown that such investments were not risky or speculative; and  
19 failing to inform Brown that her principal was being systematically eroded and depleted by  
20 Defendants' improper investment activities.

21  
22  
23           59. As a direct and foreseeable result of the violation of their fiduciary duty to her,  
24 Brown has sustained direct economic damages, the exact amount of which is as yet unknown  
25 to her but will be shown at trial, and constituting an amount not less than \$1,000,000.  
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1 prospective client;

2 (3) acting as principal for his own account, knowingly to sell  
3 any security to or purchase any security from a client, or acting as  
4 broker for a person other than such client, knowingly to effect any  
5 sale or purchase of any security for the account of such client,  
6 without disclosing to such client in writing before the completion  
7 of such transaction the capacity in which he is acting and obtaining  
8 the consent of the client to such transaction. The prohibitions of  
9 this paragraph shall not apply to any transaction with a customer of  
10 a broker or dealer if such broker or dealer is not acting as an  
11 investment adviser in relation to such transaction.  
12

13 (4) to engage in any act, practice, or course of business which is  
14 fraudulent, deceptive, or manipulative.  
15  
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17

18 64. The acts and omissions of Smart and Smart Assets, LLCs, as alleged hereinabove,  
19 directly violated the foregoing statutory provisions.

20 65. The AIM GROUP defendants aided and abetted those violations by failing to  
21 supervise Smart and restrain him. Frank Winger was at all times the principal, officer and or  
22 manager with day-to-day responsibility for overseeing Smart's activities. Winger and the AIM  
23 Group defendants knew or were grossly negligent and reckless in failing to ascertain that Smart  
24 was not providing appropriate investment advice to clients and failed to take any action other  
25 than firing Smart in 2005, but only after Smart had persuaded Padilla to transfer all of their  
26 assets to Smart's personal control or under his control in Smart Assets, LLC. Thereafter, the  
27  
28

1 Defendants failed to warn Plaintiff, Padilla of Smart's breaches of fiduciary duty, violations of  
2 the act, and fraud in fulfilling his duties as an investment adviser. Based on the foregoing,  
3 Winger and the AIM Group Defendants willfully or in a consciously reckless manner aided and  
4 abetted and caused violations of Section 206(2) of the Advisers Act.  
5

6 66. Defendants failed reasonably to supervise Smart with a view towards preventing  
7 his violations by placing him in a position of responsibility with respect to clients such as  
8 Padilla, without proper training and without establishing adequate procedures to ensure that  
9 he was making financial planning recommendations that were appropriate for the plaintiffs'  
10 ages and financial circumstances. Defendants devoted inadequate resources to ensure  
11 compliance with the Investment Advisers Act and failed to implement adequate control  
12 mechanisms.  
13

14 67. As a direct and foreseeable result of the violation of the foregoing provisions of  
15 the Investment Advisers Act, Plaintiff, Padilla has sustained direct economic damages, the  
16 exact amount of which is as yet unknown to her but will be shown at trial, and constituting an  
17 amount not less than \$1,000,000. In addition, Padilla is entitled to restitution of all fees,  
18 whether disclosed or undisclosed, either paid by her to Defendants or deducted by them from  
19 any funds received from her as fees or similar consideration for their purported rendering of  
20 investment advisory services, the amount of which is currently unknown but will be shown at  
21 time of trial herein.  
22  
23  
24

25 **SIXTH CLAIM FOR RELIEF**  
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1                   **Aiding and Abetting Violation of Securities Act of 1933 By**  
2                   **Plaintiffs, Virginia Padilla and Lisa Marie Padilla, Trustee of the**  
3                   **Padilla Trust against all Defendants**  
4

5  
6           68.     Plaintiffs, Virginia Padilla and Lisa Marie Padilla, Trustee of the Padilla Trust  
7 (collectively "Padilla") reallege and incorporate by reference paragraphs 1 through 37,  
8 inclusive, as if set forth at length herein.

9           69.     Under the following relevant provision of the Securities Act of 1933, i.e., 15  
10 U.S.C. § 77I(a)(2), the following practices on the part of any person selling securities, or offering  
11 securities for sale, are all declared to be unlawful and a remedy for such unlawful acts is  
12 provided:  
13

14                   (2) offers or sells a security (whether or not exempted by the provisions  
15 of section 77c of this title, other than paragraphs (2) and (14) of subsection (a)  
16 of said section), by the use of any means or instruments of transportation or  
17 communication in interstate commerce or of the mails, by means of a  
18 prospectus or oral communication, which includes an untrue statement of a  
19 material fact or omits to state a material fact necessary in order to make the  
20 statements, in the light of the circumstances under which they were made, not  
21 misleading (the purchaser not knowing of such untruth or omission), and who  
22 shall not sustain the burden of proof that he did not know, and in the exercise  
23 of reasonable care could not have known, of such untruth or omission, shall be  
24 liable, subject to subsection (b) of this section, to the person purchasing such  
25 security from him, who may sue either at law or in equity in any court of  
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1 competent jurisdiction, to recover the consideration paid for such security with  
2 interest thereon, less the amount of any income received thereon, upon the  
3 tender of such security, or for damages if he no longer owns the security.  
4

5 70. The acts of Smart and Smart Assets, LLC hereinabove set forth violated the  
6 aforesaid provision of the Securities Act of 1933, as amended.

7 71. The acts of Defendants, Frank Winger and the AIM Group hereinabove set forth  
8 caused and or knowingly provided substantial assistance to Smart and Smart Assets, LLC's  
9 violations of the above provision of the of the Securities Act of 1933, as amended.  
10

11 72. As a direct and foreseeable result of the violation of the foregoing provisions of  
12 the Securities Act, Padilla has sustained direct economic damages, the exact amount of which  
13 is as yet unknown to her but will be shown at trial, and constituting an amount not less than  
14 approximately \$1,000,000  
15

16  
17 **SEVENTH CLAIM FOR RELIEF**

18 **Fraud By Plaintiffs, Virginia Padilla and Lisa Marie Padilla,**

19 **Trustee of the Padilla Trust against all Defendants**

20 73. Plaintiffs, Virginia Padilla and Lisa Marie Padilla, Trustee of the Padilla Trust  
21 (collectively "Padilla") reallege and incorporate by reference paragraphs 1 through 37,  
22 inclusive, as if set forth at length herein.  
23

24 74. The acts of defendants herein named constituted a fraudulent course of  
25 conduct as against Padilla. In particular, Smart, acting as the actual, ostensible or apparent  
26 agent of each and every named defendant herein, made the representations hereinabove set  
27 forth in order to induce Padilla to entrust the funds in question with him; knew that the  
28



1           79. At all relevant times, Defendants herein named all held themselves out to  
2 Padilla to be experienced investment advisors, competent to render reliable investment advice  
3 consistent with Padilla's needs. Defendants knew that Padilla would rely upon Defendants to  
4 use that degree of care and to have that degree of competence normally expected of  
5 investment advisors. By reason thereof, Defendants were in a fiduciary relationship with  
6 Padilla, and owed Padilla the fiduciary duties of reasonable care, utmost good faith, integrity,  
7 and loyalty. With regard to their involvement with investments to be made or actually made by  
8 her, Defendants were under a duty to protect Padilla's interests through the exercise of such  
9 skill, care, prudence, diligence and judgment as might reasonably be expected of an  
10 experienced and skilled investment advisor.  
11

12  
13           80. Defendants also owed Padilla the duty to disclose to Padilla all material facts  
14 within Defendants' knowledge that in any way affected any of the investments made involving  
15 her assets, and to explain to Padilla the practical impact and potential risks of the investments,  
16 investment programs and overall course of dealing in which Defendants were engaged.  
17

18           81. Defendants also were under a duty not to recommend, or pursue investments  
19 in, securities or other products that were unsuitable for Padilla in light of her financial  
20 situation, needs and investment objectives -- which at all times Defendants understood to be  
21 to preserve her capital, generate a reasonable income annually, and enable Katherine to  
22 maintain her modest standard of living and pay for medical expenses without becoming a  
23 burden upon surviving members of her family.  
24

25           82. By engaging in the reckless and unsuitable acts set forth hereinabove with  
26 regard to investment of her funds, Defendants breached their fiduciary duties to Padilla by,  
27 among other things, disregarding Padilla's stated investment objectives and financial needs;  
28

1 failing to exercise requisite care in selecting appropriate investments for's Padilla assets; failing  
2 to invest Padilla's assets in stable, secure, income-producing securities, and instead investing  
3 Padilla's assets in high-risk, speculative products; failing to disclose all material facts  
4 concerning investment decisions to Padilla; failing to inform Padilla of the risks associated with  
5 such investments; falsely assuring Padilla that such investments were not risky or speculative;  
6 and failing to inform Padilla that her principal was being systematically eroded and depleted by  
7 Defendants' improper investment activities.  
8

9  
10 83. As a direct and foreseeable result of the violation of their fiduciary duty to her,  
11 Padilla has sustained direct economic damages, the exact amount of which is as yet unknown  
12 to her but will be shown at trial, and constituting an amount not less than \$1,000,000.

13 84. As a direct and foreseeable result of the violation of their fiduciary duty to her,  
14 Padilla has sustained severe emotional distress, all to her general damage in such amount as  
15 may be shown at time of trial.  
16

17 85. The acts of defendants herein named constituted, and were intended to  
18 constitute, acts of fraud, oppression and malice, and by reason thereof Padilla is entitled to  
19 recover punitive or exemplary damage against defendants, and each of them.  
20

21  
22 **NINTH CLAIM FOR RELIEF**

23 **Plaintiff, Dagmar Chaplin- Lee against all AIM Group Defendants**  
24 **for Aiding and Abetting Violation of Investment Advisers Act By**  
25 **Smart and Smart Assets, LLC**  
26

27 86. Plaintiff, Dagmar Chaplin-Lee ("Lee") realleges and incorporates by reference  
28 paragraphs 1 through 37, inclusive, as if set forth at length herein.

1           87. Under the relevant provision of the Investment Advisers Act, i.e., 15 U.S.C. Sec.  
2 80b-6, the following practices on the part of any investment adviser are all declared to be  
3 unlawful:

4                   (1) to employ any device, scheme, or artifice to defraud any  
5 client or prospective client;

6                   (2) to engage in any transaction, practice, or course of  
7 business which operates as a fraud or deceit upon any client or  
8 prospective client;

9                   (3) acting as principal for his own account, knowingly to sell  
10 any security to or purchase any security from a client, or acting as  
11 broker for a person other than such client, knowingly to effect any  
12 sale or purchase of any security for the account of such client,  
13 without disclosing to such client in writing before the completion  
14 of such transaction the capacity in which he is acting and obtaining  
15 the consent of the client to such transaction. The prohibitions of  
16 this paragraph shall not apply to any transaction with a customer of  
17 a broker or dealer if such broker or dealer is not acting as an  
18 investment adviser in relation to such transaction.

19                   (4) to engage in any act, practice, or course of business which is  
20 fraudulent, deceptive, or manipulative.

21           88. The acts and omissions of Smart and Smart Assets, LLCs, as alleged hereinabove,  
22 directly violated the foregoing statutory provisions.  
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1           89.     The AIM GROUP defendants aided and abetted those violations by failing to  
2 supervise Smart and restrain him. Frank Winger was at all times the principal, officer and or  
3 manager with day-to-day responsibility for overseeing Smart’s activities. Winger and the AIM  
4 Group defendants knew or were grossly negligent and reckless in failing to ascertain that Smart  
5 was not providing appropriate investment advice to clients and failed to take any action other  
6 than firing Smart in 2005, at or about the time Smart was persuading Lee to transfer all of her  
7 assets to Smart’s personal control or under his control in Smart Assets, LLC. Thereafter, the  
8 Defendants failed to warn Plaintiff, Lee of Smart’s breaches of fiduciary duty, violations of the  
9 act, and fraud in fulfilling his duties as an investment adviser. Based on the foregoing, Winger  
10 and the AIM Group Defendants willfully or in a consciously reckless manner aided and abetted  
11 and caused violations of Section 206(2) of the Advisers Act.

14           90.     Defendants failed reasonably to supervise Smart with a view towards preventing  
15 his violations by placing him in a position of responsibility with respect to clients such as Lee,  
16 without proper training and without establishing adequate procedures to ensure that he was  
17 making financial planning recommendations that were appropriate for the plaintiffs’ ages and  
18 financial circumstances. Defendants devoted inadequate resources to ensure compliance with  
19 the Investment Advisers Act and failed to implement adequate control mechanisms.

22           91.     As a direct and foreseeable result of the violation of the foregoing provisions of  
23 the Investment Advisers Act, Plaintiff, Lee has sustained direct economic damages, the exact  
24 amount of which is as yet unknown to her but will be shown at trial, and constituting an  
25 amount not less than \$250,000. In addition, Lee is entitled to restitution of all fees, whether  
26 disclosed or undisclosed, either paid by her to Defendants or deducted by them from any funds  
27 received from her as fees or similar consideration for their purported rendering of investment  
28

1 advisory services, the amount of which is currently unknown but will be shown at time of trial  
2 herein.

3  
4  
5 **TENTH CLAIM FOR RELIEF**

6 **Aiding and Abetting Violation of Securities Act of 1933 By**

7 **Plaintiff, Dagmar Chaplin-Lee against all Defendants**

8  
9  
10 92. Plaintiff, Dagmar Chaplin-Lee (“Lee”) realleges and incorporates by reference  
11 paragraphs 1 through 37, inclusive, and 39 through 43, inclusive, as if set forth at length herein.

12 93. Under the following relevant provision of the Securities Act of 1933, i.e., 15  
13 U.S.C. § 77l(a)(2), the following practices on the part of any person selling securities, or offering  
14 securities for sale, are all declared to be unlawful and a remedy for such unlawful acts is  
15 provided:  
16

17 (2) offers or sells a security (whether or not exempted by the provisions  
18 of section 77c of this title, other than paragraphs (2) and (14) of subsection (a)  
19 of said section), by the use of any means or instruments of transportation or  
20 communication in interstate commerce or of the mails, by means of a  
21 prospectus or oral communication, which includes an untrue statement of a  
22 material fact or omits to state a material fact necessary in order to make the  
23 statements, in the light of the circumstances under which they were made, not  
24 misleading (the purchaser not knowing of such untruth or omission), and who  
25 shall not sustain the burden of proof that he did not know, and in the exercise  
26 of reasonable care could not have known, of such untruth or omission, shall be  
27  
28

1 liable, subject to subsection (b) of this section, to the person purchasing such  
2 security from him, who may sue either at law or in equity in any court of  
3 competent jurisdiction, to recover the consideration paid for such security with  
4 interest thereon, less the amount of any income received thereon, upon the  
5 tender of such security, or for damages if he no longer owns the security.  
6

7 94. The acts of Smart and Smart Assets, LLC hereinabove set forth violated the  
8 aforesaid provision of the Securities Act of 1933, as amended.

9 95. The acts of Defendants, Frank Winger and the AIM Group hereinabove set forth  
10 caused and or knowingly provided substantial assistance to Smart and Smart Assets, LLC's  
11 violations of the above provision of the of the Securities Act of 1933, as amended.  
12

13 96. As a direct and foreseeable result of the violation of the foregoing provisions of  
14 the Securities Act, Lee has sustained direct economic damages, the exact amount of which is as  
15 yet unknown to her but will be shown at trial, and constituting an amount not less than  
16 approximately \$250,000  
17

18  
19 **ELEVENTH CLAIM FOR RELIEF**

20 **Fraud By Plaintiff, Dagmar Chaplin-Lee against all Defendants**

21 97. Plaintiff, Dagmar Chaplin-Lee ("Lee") realleges and incorporates by reference  
22 paragraphs 1 through 37, inclusive, as if set forth at length herein.  
23

24 98. The acts of defendants herein named constituted a fraudulent course of  
25 conduct as against Lee. In particular, Smart, acting as the actual, ostensible or apparent agent  
26 of each and every named defendant herein, made the representations hereinabove set forth in  
27 order to induce Lee to entrust the funds in question with him; knew that the representations  
28

1 were materially false at the time they were made; made them with the intent that they would  
2 be relied upon; and made them with the intent to deprive Lee of the funds entrusted by her in  
3 order to enrich himself at her expense. Lee did not know that such representations by Smart  
4 were false either when they were made or when she entrusted her funds to Smart, and  
5 justifiably relied upon such representations.  
6

7 99. As a direct and foreseeable result of the aforesaid fraudulent course of conduct,  
8 Lee has sustained direct economic damages, the exact amount of which is as yet unknown to  
9 her but will be shown at trial, and constituting an amount not less than \$250,000.  
10

11 100. As a direct and foreseeable result of the aforesaid fraudulent course of conduct,  
12 Lee has lost her savings and retirement income which caused her to sustain severe emotional  
13 distress, all to her general damage in such amount as may be shown at time of trial.  
14

15 101. The acts of defendants herein named constituted, and were intended to  
16 constitute, acts of fraud, oppression and malice, and by reason thereof Plaintiff is entitled to  
17 recover punitive or exemplary damage against defendants, and each of them.  
18

19 **TWELFTH CLAIM FOR RELIEF**

20 **Breach of Fiduciary Duty By Plaintiff, Dagmar Chaplin-Lee**  
21 **against all Defendants**  
22

23 102. Plaintiff, Dagmar Chaplin-Lee ("Lee") realleges and incorporates by reference  
24 paragraphs 1 through 37, inclusive, as if set forth at length herein.

25 103. At all relevant times, Defendants herein named all held themselves out to Lee to  
26 be experienced investment advisors, competent to render reliable investment advice  
27 consistent with Lee's needs. Defendants knew that Lee would rely upon Defendants to use  
28

1 that degree of care and to have that degree of competence normally expected of investment  
2 advisors. By reason thereof, Defendants were in a fiduciary relationship with Lee, and owed  
3 Lee the fiduciary duties of reasonable care, utmost good faith, integrity, and loyalty. With  
4 regard to their involvement with investments to be made or actually made by her, Defendants  
5 were under a duty to protect Lee's interests through the exercise of such skill, care, prudence,  
6 diligence and judgment as might reasonably be expected of an experienced and skilled  
7 investment advisor.  
8

9  
10 104. Defendants also owed Lee the duty to disclose to Lee all material facts within  
11 Defendants' knowledge that in any way affected any of the investments made involving her  
12 assets, and to explain to Lee the practical impact and potential risks of the investments,  
13 investment programs and overall course of dealing in which Defendants were engaged.  
14

15 105. Defendants also were under a duty not to recommend, or pursue investments  
16 in, securities or other products that were unsuitable for Lee in light of her financial situation,  
17 needs and investment objectives -- which at all times Defendants understood to be to preserve  
18 her capital, generate a reasonable income annually, and enable Lee to maintain her modest  
19 standard of living without becoming a burden upon surviving members of her family.  
20

21 106. By engaging in the reckless and unsuitable acts set forth hereinabove with  
22 regard to investment of her funds, Defendants breached their fiduciary duties to Lee by,  
23 among other things, disregarding Lee's stated investment objectives and financial needs; failing  
24 to exercise requisite care in selecting appropriate investments for's Lee assets; failing to invest  
25 Lee's assets in stable, secure, income-producing securities, and instead investing Lee's assets in  
26 high-risk, speculative products; failing to disclose all material facts concerning investment  
27 decisions to Lee; failing to inform Lee of the risks associated with such investments; falsely  
28

1 assuring Lee that such investments were not risky or speculative; and failing to inform Lee that  
2 her principal was being systematically eroded and depleted by Defendants' improper  
3 investment activities.

4  
5 107. As a direct and foreseeable result of the violation of their fiduciary duty to her,  
6 Lee has sustained direct economic damages, the exact amount of which is as yet unknown to  
7 her but will be shown at trial, and constituting an amount not less than \$250,000.

8  
9 108. As a direct and foreseeable result of the violation of their fiduciary duty to her,  
10 Lee has sustained severe emotional distress, all to her general damage in such amount as may  
11 be shown at time of trial.

12  
13 109. The acts of defendants herein named constituted, and were intended to  
14 constitute, acts of fraud, oppression and malice, and by reason thereof Lee is entitled to  
15 recover punitive or exemplary damage against defendants, and each of them.

16  
17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs demand a trial by jury in this matter.

19  
20 **PRAYER**

21  
22 WHEREFORE, Plaintiffs pray for relief and judgment as follows:

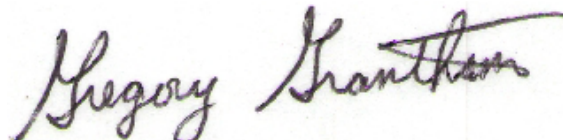
- 23 A. Awarding each plaintiff compensatory damages, jointly and severally, for all  
24 damages sustained as a result of Defendants' wrongdoing, in an amount to be  
25 proven at trial, including pre-judgment interest on the damages;  
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27 B. Awarding each plaintiff punitive damages, including interest;  
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C. Awarding each plaintiff reasonable costs and attorneys' fees; and

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D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

Dated: October 11, 2010

LAW OFFICE OF GREGORY GRANTHAM



Gregory Grantham, attorneys for Virginia Padilla; Lisa Marie Padilla, Trustee Of The Padilla Family Trust; Don Logan, Trustee Of The P & K Brown Family Trust; Katherine Anne Brown; Dagmar Chaplin-Lee

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