

1 DEMETRIOS A. BOUTRIS (124161)
California Corporations Commissioner
2 VIRGINIA JO DUNLAP (142221)
Assistant Commissioner
3 DONALD A. NEWBOLD (201167)
Corporations Counsel
4 1515 K Street, Suite 200
Sacramento, California 95814
5 Telephone: (916) 324-5217
Fax: (916) 445-6985

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6 Attorneys for People of the State of California
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN JOAQUIN

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA, by and through the
12 CALIFORNIA CORPORATIONS
COMMISSIONER,

13 Plaintiff,

14 vs.

15 DONALD T. KEMPLER, III, and DOE ONE
16 through TEN inclusive,

17 Defendants.
18

Case No.: CV020391

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
ANCILLARY RELIEF**

(Corporations Code §§ 25110, 25210,
25401, 25530, and 25535)

19 Demetrios A. Boutris, California Corporations Commissioner, (hereinafter
20 "Commissioner"), acting to protect the public from unlawful and unlicensed securities
21 brokering activity; the issuance of unqualified securities; and from false statements or
22 omissions of material information in the same; brings this action in the public interest in
23 the name of the People of the State of California. The People of the State of California
24 allege on information and belief as follows:

25 **JURISDICTION AND VENUE**

26 1. The People file this complaint and institute this proceeding pursuant to
27 section 25530 of the California Corporations Code seeking injunctive relief, ancillary
28 relief, and civil money penalties due to violations by the Defendants of the California

1 Corporate Securities Law of 1968, Corporations Code section 25000 *et seq.* Specifically,
2 the People seek to enjoin Defendant Donald Kemplen, including fictitious name TCA
3 Stock Club, and Defendants Doe One through Ten from engaging in the business of a
4 securities broker-dealer without having first secured from the California Corporations
5 Commissioner a certificate authorizing Defendants to act in that capacity; from issuing
6 unqualified securities in the form of memberships in the TCA Stock Club without having
7 first qualified the security; and from soliciting and obtaining funds from investors by
8 means of untrue statements of a material fact or omissions of material fact.

9 2. Jurisdiction and venue as to each Defendant is proper in this judicial district
10 pursuant to provisions of California Corporations Code sections 25530 and 25535, and
11 sections 393, 395(a), and 395.5 of the California Code of Civil Procedure. Violations of
12 provisions of the Corporate Securities Law of 1968 subject the person or entity to civil
13 penalties pursuant to Corporations Code section 25535. The contract was entered into
14 between an investor and Defendant Donald T. Kemplen, III, doing business as TCA
15 Stock Club, in the City of Stockton, California. People's cause of action arose within the
16 County of San Joaquin, and the transaction at issue took place in this County. The
17 unlawful acts hereinafter alleged had a direct effect on a resident within the State of
18 California and, more particularly, within the County of San Joaquin.

19 **DEFENDANTS**

20 3. Defendant Donald T. Kemplen, III, and Does One through Ten, inclusive,
21 hereinafter "Defendant", is a natural person believed to be residing presently in the
22 County of Stanislaus and at all times mentioned herein, was doing business under the
23 fictitious name of TCA Stock Club. During the period covered by the complaint,
24 Defendant, individually and doing business under the fictitious name TCA Stock Club,
25 engaged in the business of a securities broker-dealer, issued unqualified securities in the
26 form of memberships in TCA Stock Club, and made material false statements to an
27 investor all in violation of Corporations Code sections 25110, 25210, and 25401.
28 Defendant's activities as a securities broker-dealer, which involved violations of law

1 hereinafter described, occurred primarily in the County of San Joaquin.

2 4. The People are unaware of the true names or capacities of the defendants
3 sued herein under the fictitious names Doe One through Doe Ten inclusive. The People
4 will amend this complaint to show the true name of each such defendant when the same
5 has been ascertained. Doe defendants, One through Ten, are believed to be residents of
6 California and employees, agents, co-venturers, or co-conspirators of Defendant, and
7 were acting in their respective capacities in doing the acts complained of, thereby
8 imputing liability to each other.

9 **FACTUAL SUMMARY**

10 5. On or about May 2000, Defendant Donald Kemplen holding himself out as a
11 securities broker-dealer or investment adviser attracted one or more investors to invest
12 funds in TCA Stock Club, a fictitious business name. Defendant told one "Investor," that
13 the Defendant with offices in Salinas, California, and Manteca, California, invested money
14 for clients. Defendant assured the Investor that if the Investor wanted to invest his
15 money through the Defendant the investment would be safe and that the most the
16 Investor could lose would be 10% of his investment.

17 6. The Investor decided to invest and on May 17, 2000, he went to the
18 Defendant's home in Stockton. The Defendant told the Investor that he had better be
19 investing at least \$5,000. The minimum investment in TCA Stock Club was \$5,000. The
20 Investor wrote two checks totaling \$11,000 and gave both of the checks to the Defendant
21 to invest. The Defendant had the sole discretion as to what investment the Investor's
22 funds would be placed.

23 7. But instead of investing the \$11,000 as promised, on June 14, 2000,
24 Defendant invested only \$5,000 and converted the remaining money to his own personal
25 use. Subsequent reports issued by the Defendant to the Investor falsely stated that
26 \$11,000 had been invested. The Defendant sent a letter dated February 26, 2001, with

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1 attachments, to the Investor, which indicated that Investor's entire investment of \$11,000
2 had been lost in trading.

3 **FIRST CAUSE OF ACTION**

4 UNLICENSED BROKER-DEALER ACTIVITY
5 (Corporations Code §25210)
6 AS AGAINST ALL DEFENDANTS

7 8. The People reallege and incorporates herein by reference paragraphs 1
8 through 7 as though set forth at length herein.

9 9. Corporations Code section 25210(a) sets forth the broker-dealer licensure
10 requirement as follows:

11 Unless exempted under the provisions of Chapter 1 (commencing with
12 Section 25200) of this part, no broker-dealer shall effect any transaction
13 in, or induce or attempt to induce the purchase or sale of, any security in
14 this state unless the broker-dealer has first applied for and secured from
15 the commissioner a certificate, then in effect, authorizing that person to act
16 in that capacity.

17 10. Corporations Code section 25530 states in part:

18 (a) Whenever it appears to the commissioner that any person has
19 engaged or is about to engage in any act or practice constituting a
20 violation of any provision of this division or any rule or order hereunder,
21 the commissioner may in the commissioner's discretion bring an action in
22 the name of the people of the State of California in the superior court to
23 enjoin the acts or practices or to enforce compliance with this law or any
24 rule or order hereunder. Upon a proper showing, a permanent or
25 preliminary injunction, restraining order, or writ of mandate shall be
26 granted and a receiver, monitor, conservator, or other designated fiduciary
27 or officer of the court may be appointed for the defendant or the
28 defendant's assets, or any other ancillary relief may be granted as
appropriate.

(b) If the commissioner determines it is in the public interest, the
commissioner may include in any action authorized by subdivision (a) a
claim for ancillary relief, including but not limited to, a claim for restitution
or disgorgement or damages on behalf of the persons injured by the act or
practice constituting the subject matter of the action, and the court shall
have jurisdiction to award additional relief.

11. Corporations Code section 25535(a) provides:

(a) Any person who violates any provision of this law, or who violates any
rule or order under this law, shall be liable for a civil penalty not to exceed
twenty-five thousand dollars (\$ 25,000) for each violation, which shall be
assessed and recovered in a civil action brought in the name of the people

1 of the State of California by the commissioner in any court of competent
2 jurisdiction.

3 12. The Defendant, including the fictitious name TCA Stock Club, and all Doe
4 Defendants, are not licensed to engage in the business of a securities broker-dealer by
5 the State of California, or any other similar licensing entity. Beginning at a time in or
6 about June of 2000, defendants, and each of them, willfully and unlawfully engaged in the
7 business of a securities broker-dealer in the State of California by acting in such capacity
8 without securing from the Corporations Commissioner or any similar licensing entity a
9 certificate authorizing defendants to act as securities broker-dealers. The Defendant's
10 unlawful acts include, but are not limited to, engaging in a course of business of effecting
11 the transactions of securities when the Defendant bought and sold securities using funds
12 provided by one or more investors.

13 13. The Defendant's pattern of conduct, as set forth above, demonstrates the
14 necessity for granting permanent injunctive and ancillary relief restraining such and
15 similar acts in violation of section 25210, as well as imposition of appropriate civil
16 penalties, and other remedies as deemed appropriate at trial.

17 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
18 as set forth below.

19 **SECOND CAUSE OF ACTION**

20 OFFER AND SALE OF SECURITY
21 WITHOUT ITS BEING QUALIFIED
(Corporations Code § 25110)
22 AS AGAINST ALL DEFENDANTS

23 14. The People reallege and incorporates herein by reference paragraphs 1
24 through 13, inclusive, as though set forth at length herein.

25 15. Corporations Code section 25110 makes it unlawful to offer or sell in this
26 state any security, unless exempted, that has not been qualified. Section 25110
27 provides, in part:

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1 It is unlawful for any person to offer or sell in this state any security in an
 2 issuer transaction (other than in a transaction subject to Section 25120),
 3 whether or not by or through underwriters, unless such sale has been
 4 qualified under Section 25111, 25112 or 25113 (and no order under
 5 Section 25140 or subdivision (a) of Section 25143 is in effect with respect
 6 to such qualification) or unless such security or transaction is exempted or
 7 not subject to qualification under Chapter 1 (commencing with Section
 8 25100) of this part.

9 16. The Defendant, including the fictitious name TCA Stock Club, and all Doe
 10 Defendants, issued securities involving memberships in the TCA Stock Club and the
 11 securities were not qualified with the Department of Corporations or exempted from such
 12 qualification. Beginning at a time in or about May of 2000, defendants, and each of
 13 them, willfully and unlawfully issued a membership in the TCA Stock Club to one or more
 14 investors without qualifying the security with the Corporations Commissioner. The
 15 Defendant's unlawful acts include, but are not limited to, issuing memberships in the TCA
 16 Stock Club involving a minimum investment of \$5,000 where Defendant had sole
 17 authority to invest the funds provided by one or more investors.

18 17. The Defendant's pattern of conduct, as set forth above, demonstrates the
 19 necessity for granting permanent injunctive and ancillary relief restraining such and
 20 similar acts in violation of section 25210, as well as imposition of appropriate civil
 21 penalties, and other remedies as deemed appropriate at trial.

22 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
 23 as set forth below.

24 **THIRD CAUSE OF ACTION**

25 OFFER OR SALE OF A SECURITY
 26 BY MEANS OF WRITTEN & ORAL COMMUNICATIONS
 27 CONTAINING UNTRUE STATEMENTS OR OMISSIONS
 28 OF MATERIAL FACT
 (Corporations Code § 25401)
 AS AGAINST ALL DEFENDANTS

18. The People reallege and incorporates herein by reference paragraphs 1
 through 17, inclusive, as though set forth at length herein.

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1 19. Corporations Code section 25401 makes it unlawful to offer or sell a
2 security by means of any written or oral statements which include an untrue statement of
3 material fact or omits to state a material fact. Section 25401 states:

4 It is unlawful for any person to offer or sell a security in this state or buy or
5 offer to buy a security in this state by means of any written or oral
6 communication which includes an untrue statement of a material fact or
7 omits to state a material fact necessary in order to make the statements
8 made, in the light of the circumstances under which they were made, not
9 misleading.

10 20. The Defendant, including the fictitious name TCA Stock Club, and all Doe
11 Defendants engaged in the unlawful offer and sale of a security by means of untrue
12 statements of a material fact or omitted to state a material fact necessary in order to
13 make the statements made, in light of the circumstances under which they were made,
14 not misleading, when defendants, and each of them, offered and/or sold to one or more
15 investors securities in the form of a membership in the TCA Stock Club.

16 21. The Defendant told Investor, among other things, that the Defendant had
17 offices in Manteca, California, and Salinas, California; that his investment would be safe;
18 and, that the Investor could lose no more than 10% of the money the Investor had
19 invested due to certain safeguards the Defendant had established. The Investor joined
20 TCA Stock Club giving the Defendant \$11,000 to invest. The Defendant did not have
21 offices as an investment adviser or stock broker-dealer in Manteca, California, and
22 Salinas, California. The investment was not safe and the Investor lost his entire
23 investment.

24 22. The Defendant made oral and written statements to the Investor that the
25 entire \$11,000 would be invested. The Defendant invested only \$5,000 of the Investor's
26 funds and converted the remaining \$6,000 for his own personal use.

27 23. The Defendant's pattern of conduct, as set forth above, demonstrates the
28 necessity for granting permanent injunctive and ancillary relief restraining such and
similar acts in violation of section 25401, as well as imposition of appropriate civil
penalties, and other remedies as deemed appropriate at trial.

PRAYER

WHEREFORE, the People pray for judgment against all defendants, and each of them, as follows:

1. That pursuant to Corporations Code section 25530 the Defendant doing business as fictitious name TCA Stock Club, and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from engaging in the business of a securities broker-dealer in this state in violation of Corporations Code section 25210 without first applying for and securing from the Commissioner of Corporations a certificate authorizing defendants to act in the capacity of a securities broker-dealer unless exempted;

2. That pursuant to Corporations Code section 25530 the Defendant doing business as fictitious name TCA Stock Club, and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from engaging in issuing securities in the form of memberships in the fictitious name TCA Stock Club in violations of Corporations Code 25110, unless such security is properly qualified or is exempt from qualification;

3. That pursuant to Corporations Code section 25530 the Defendant doing business as fictitious name TCA Stock Club, and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from violating Corporations Code section 25401 in the offer or sale of a security by making untrue statements of a material fact or omitting to state a fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not

