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

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

13 Plaintiff,

14 vs.

15 C. PALMIERI ENTERPRISES, INC., a
Corporation; CARMEN J. PALMIERI,
16 individually and doing business as
NATIONAL MEDICAL FUNDING, and
17 TRUST MANAGEMENT SERVICES and
SIERRA FUNDING GROUP; SIERRA
18 FINDING GROUP, INC., a Corporation;
INNOVATIVE FINANCIAL SERVICES,
19 INC., an Arizona corporation; ROBERT
SHEARBURN; CC&K TRUST, by and
20 through CARMEN J. PALMIERI, Trustee;
LAWRENCE C. REED; and DOES 1
21 through 100,

22 Defendants.
23

Case No.: [GIC 785226](#)

**COMPLAINT FOR TEMPORARY
RESTRAINING ORDER; PRELIMINARY
INUNCTION;PERMANENT INJUNCTION;
CIVIL PENALTIES; AND ANCILLARY
RELIEF**

(Corporations Code §§ 25110, 25210,
25401, 25541; Financial Code §§ 17000,
17200, *et seq.*)

24
25 Demetrios A. Boutris, Commissioner of Corporations for the State of California, acting
26 to protect the public from the unlawful and fraudulent sale of unqualified securities and
27 unlicensed activity by a natural persons involved in the securities and escrow businesses,
28 brings this action in the public interest in the name of the People of the State of California.

1 The People of the State of California allege as follows:

2 **VENUE AND JURISDICTION**

3 1. Plaintiff, by this action and pursuant to Corporations Code §25530 seeks to
4 enjoin defendants: 1) from effecting transactions in securities in this state without having
5 secured from the Corporations' Commissioner a certificate authorizing defendants to act in
6 that capacity; 2) from offering and selling unqualified, nonexempt securities by means of
7 misrepresentations of material facts; and 3) from performing escrow agent services in
8 violation of the Financial Code sections 17000, *et seq.* ("Escrow Law"). Plaintiff also seeks
9 civil penalties pursuant to Corporations Code §25535.

10 2. Defendant Carmen J. Palmieri, and Does 1 through 10, inclusive, (hereafter
11 collectively referred to as "Palmieri") are natural persons residing in the County of San
12 Diego and at all times mentioned, were doing business as C. Palmieri Enterprises, Inc., and
13 also under the fictitious names of National Medical Funding and Trust Management
14 Services and Sierra Funding Group, all having a principal place of business in San Diego
15 County. Palmieri at all times mentioned herein has engaged in unlawful activity throughout
16 the State of California and in other states, specifically including Arizona, while domiciled in
17 the County of San Diego, State of California. The transactions which involved violations of
18 law hereinafter described were conducted in various counties in the State of California.
19 Plaintiff is informed and believes, and thereon alleges, that Palmieri was the principal control
20 person of activities involving all defendants which were intended to defraud investors with
21 the offer and sale of viatical investments.

22 3. Defendant C. Palmieri Enterprises, Inc., and Does 11 through 20, inclusive,
23 (hereafter collectively referred to as "C. Palmieri Enterprises, Inc.") are, and at all times
24 mentioned herein, were corporations licensed to conduct business in the State of California
25 that have a principal place of business in San Diego County. Plaintiff is informed and
26 believes, and thereon alleges, that C. Palmieri Enterprises, Inc. was utilized by Palmieri to
27 offer and sell unregistered securities in California and other states, including Arizona, and
28 as an alter ego of Palmieri was used to defraud investors with sales of viatical investments.

1 4. Defendant National Medical Funding and Does 21 through 30, inclusive,
2 (hereafter collectively referred to as “National Medical Funding”) at all times mentioned
3 herein, were fictitious businesses which were an alter ego of and under the control of
4 Palmieri, and was utilized by Palmieri to offer and sell unregistered securities in California
5 and other states, specifically including Arizona. Plaintiff is informed and believes, and
6 thereon alleges, that National Medical Funding was utilized by Palmieri to defraud investors
7 with sales of viatical investments.

8 5. Defendant Trust Management Services and Does 31 through 40, inclusive,
9 (hereafter collectively referred to as “Trust Management Services”) at all times mentioned
10 herein, were fictitious businesses that were an alter ego of and under the control of
11 Palmieri, and were utilized by Palmieri to offer and sell unregistered securities in California
12 and other states, specifically including Arizona. Plaintiff is informed and believes, and
13 thereon alleges, that National Medical Funding was utilized by Palmieri to defraud investors
14 with sales of viatical investments. In addition, plaintiff alleges that Trust Management
15 Services was, in fact, an escrow company under the jurisdiction of Financial Code sections
16 17000, *et seq.* but was not licensed by the Department of Corporations for that purpose.

17 6. Defendant Sierra Funding Group and Does 41 through 50, inclusive (hereafter
18 collectively referred to as “Sierra Funding Group”), at all times mentioned herein, were
19 fictitious businesses that were an alter ego of and under the control of Palmieri, and was
20 utilized by Palmieri to offer and sell unregistered securities in California and other states,
21 specifically including Arizona. Plaintiff is informed and believes, and thereon alleges, that
22 National Medical Funding was utilized by Palmieri to defraud investors with sales of viatical
23 investments.

24 7. Defendant Sierra Funding Group, Inc., and Does 51 through 60, inclusive,
25 (hereafter collectively referred to as “Sierra Funding Group, Inc.”) at all times mentioned
26 herein, were corporations licensed to conduct business in California and had a principal
27 place of business in San Diego County. Plaintiff is informed and believes, and thereon
28 alleges that Sierra Funding Group, Inc., is and was, in fact, an alter ego of and under the

1 control of Palmieri, and was utilized by Palmieri to offer and sell unregistered securities in
2 California and other states, specifically including Arizona and was utilized by Palmieri to
3 defraud investors with sales of viatical investments.

4 8. Defendant Robert Shearburn and Does 61 through 70, inclusive, (hereafter
5 collectively referred to as "Shearburn"), at all times mentioned herein, were natural persons
6 residing in Arizona or Nevada, whose principal place of business was alternatively in
7 Arizona or Nevada, and were, on information and belief, working with. Palmieri, and
8 engaged in the offer and sale of unregistered securities in California and other states,
9 specifically including Arizona. Plaintiff is informed and believes, and thereon alleges, that
10 Shearburn, working in conjunction with Palmieri, was engaged in activities with the intent to
11 defraud investors with sales of viatical investments.

12 9. Defendant Innovative Financial Services, Inc., and Does 71 through 80,
13 inclusive, (hereafter collectively referred to as "Innovative Financial Services, Inc.") are, and
14 at all times mentioned herein, were corporations licensed to conduct business in Arizona
15 and, were, in fact, an alter ego of and under the control of defendant Shearburn, and were
16 utilized by Shearburn and Palmieri to offer and sell unregistered securities in California and
17 other states, specifically including Arizona. Plaintiff is informed and believes, and thereon
18 alleges, that Innovative Financial Services, Inc. was utilized by Palmieri and Shearburn to
19 defraud investors with sales of viatical investments.

20 10. Defendant LAWRENCE C. REED and Does 81 to 90, inclusive (hereafter
21 collectively referred to as "Reed") at all times mentioned herein, were natural persons
22 residing in the County of San Diego, and were, upon information and belief, a principal or
23 officer or control person in Trust Management Services, and in that capacity, engaged in the
24 unlawful acts herein alleged along with Palmieri and Shearburn.

25 11. Plaintiff is informed and believes, and thereon alleges, that defendant CC&K
26 Trust, by and through Carmen J. Palmieri, Trustee, and Does 91 through 100, inclusive
27 (hereafter collectively referred to as "CC&K Trust"), at all times mentioned herein, was a real
28 estate trust owned, managed, and controlled by Carmen J. Palmieri and his spouse,

1 Constance Palmieri, and was the mechanism utilized by Carmen J. Palmieri for purchasing
2 real properties with money obtained from investors in the viatical businesses, National
3 Medical Funding and Trust Management Services.

4 **DEFENDANTS**

5 12. At all relevant times hereto, Palmieri, individually and doing business as C.
6 Palmieri Enterprises, Inc., National Medical Funding, Trust Management Services, Sierra
7 Funding Group and Reed, engaged in the unlicensed business of effecting transactions in
8 unqualified, nonexempt securities in this state by means of misrepresentations of material
9 facts. While unlawfully engaged, Palmieri, individually and doing business as C. Palmieri
10 Enterprises, Inc., National Medical Funding, Trust Management Services, Sierra Funding
11 Group and. Reed, sold more than \$3 million in unlawful securities in the form of viatical
12 investments.

13 13. At all relevant times hereto, Shearburn, individually and doing business as
14 Innovative Financial Services, Inc., engaged in the unlicensed business of effecting
15 transactions in unqualified, nonexempt securities in this state by means of
16 misrepresentations of material facts. Plaintiff is informed and believes, and thereon alleges
17 that, while unlawfully engaged, Shearburn, individually and doing business as Innovative
18 Financial Services, Inc., sold more than \$3 million in unlawful securities to investors, for
19 which he charged and received commissions from Palmieri, C. Palmieri Enterprises, Inc.,
20 National Medical Funding, and/or Trust Management Services.

21 14. At all relevant times hereto, Innovative Financial Services, Inc established by
22 defendant Shearburn was engaged in the unlicensed business of effecting transactions in
23 unqualified, nonexempt securities in this state by means of misrepresentations of material
24 facts. While unlawfully engaged, Innovative Financial Services, Inc. received commissions
25 on all sales made by defendant National Medical Funding in the State of California.

26 15. Defendants sued herein under the fictitious names Does 1 through 100,
27 inclusive, are unknown to plaintiff who therefore sues such defendants by such fictitious
28 names. Plaintiff will amend this complaint to show the true name of each such defendant

1 when the same has been ascertained. Plaintiff is informed and believes, and thereon
2 alleges, that all defendants, including the Doe defendants, were at all times mentioned,
3 principals, agents, employers, employees, co-venturers, or co-conspirators, and were acting
4 in their respective capacities in doing the acts complained of, thereby imputing liability to
5 each other.

6 16. Plaintiff alleges upon information and belief that at all times mentioned herein,
7 all defendants, Palmieri, C. Palmieri Enterprises, Inc., National Medical Funding, Trust
8 Management Services, Sierra Funding Group, Sierra Funding Group, Inc., Shearburn,
9 Innovative Financial Services, Inc. and Reed, were each alter egos of the other, being
10 concurrently engaged and cooperating with each other in the offer and sale of unregistered,
11 nonexempt securities in the State of California, namely viatical settlement investments, to
12 investors in California and Arizona and, upon belief, other states as well, based on
13 misrepresentations of material facts and with the intent to defraud investors. As a result,
14 each defendant should be held jointly and severally liable for the acts and omissions,
15 misrepresentations and fraud, of all other defendants.

16 **FIRST CAUSE OF ACTION**

17 UNLICENSED BROKER-DEALER ACTIVITY
18 (Corporations Code §25210)
AS AGAINST ALL DEFENDANTS, EXCEPT CC&K

19 17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through
20 16, inclusive, as though set forth at length herein.

21 18. Corporations Code § 25210(a) sets forth the securities broker-dealer licensure
22 requirement as follows:

23 Unless exempted under the provisions of Chapter 1 (commencing with Section
24 25200) of this part, no broker-dealer shall effect any transaction in, or induce
25 or attempt to induce the purchase or sale of; any security in this state unless
26 the broker-dealer has first applied for and secured from the commissioner a
27 certificate, then in effect, authorizing that person to act in that capacity.

26 Corporations Code §25535 states:

27 (a) Any person who violates any provision of this law, or who violates any
28 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 of

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

3 19. Defendants Palmieri, C. Palmieri Enterprises, Inc., National Medical Funding,
4 Trust Management Services, Sierra Funding Group, Sierra Funding Group, Inc., Shearburn,
5 Innovative Financial Services, Inc. and Reed, and all Doe defendants, are not licensed to
6 offer or sell securities by the Corporations Commissioner or any other similar licensing
7 entity. Beginning at an exact date unknown to plaintiff, but at least since December 27,
8 1999, and continuing until at least July 3, 2001, defendants, and each of them, unlawfully
9 engaged in the business of effecting transactions in the State of California by acting in such
10 capacity without securing from the Corporations Commissioner or any similar licensing
11 entity an authorizing broker-dealer certificate. Defendants' unlawful acts include, but are not
12 limited to, engaging in a course of business of offering and selling unregistered and
13 nonexempt securities in the form of viatical investments from within the state to more than
14 20 people, most residents of Arizona. Most viaticals were issued by defendant National
15 Medical Funding, a company owned and operated by Palmieri. Purchases by each of these
16 investors ranged from ten thousand dollars (\$10,000) to nearly seven hundred thousand
17 dollars (\$700,000) and total approximately three million dollars (\$3,000,000) documented to
18 date. Plaintiff is informed and believes, and thereon alleges, that the total investors and
19 dollars invested will ultimately be significantly more than currently documented.

20 20. Defendant National Medical Funding was, at all times mentioned, a fictitious
21 business name and alter ego for Carmen J. Palmieri and C. Palmieri Enterprises, Inc.
22 National Medical Funding was the issuer of viatical settlement investments which, upon
23 information and belief, was to purchase viatical settlements from viators with investor funds.
24 Investors were told that their money was to be used for the purchase of insurance policies
25 from dying people. Plaintiff is informed and believes, and thereon alleges, that the money
26 was not used to purchase insurance policies, but was, in fact, used by Palmieri and C.
27 Palmieri Enterprises, Inc. to purchase personal and real property in the name of Palmieri, or
28

1 companies or real estate trusts Palmieri owned or controlled, including, but not limited to,
2 CC&K Trust.

3 21. Defendants' pattern of conduct, as set forth above, demonstrates the
4 necessity for granting permanent injunctive and ancillary relief restraining such and similar
5 acts in violation of §25210, and providing restitution or disgorgement to investors, as well as
6 imposition of appropriate civil penalties.

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

9 **SECOND CAUSE OF ACTION**

10 UNLAWFUL OFFER AND SALE OF UNQUALIFIED, NONEXEMPT SECURITIES
11 (Corporations Code §25110)
12 AS AGAINST ALL DEFENDANTS, EXCEPT CC&K

13 22. Plaintiff realleges and incorporates herein by reference paragraphs 1 through
14 21, inclusive, as though set forth at length herein.

15 23. Corporations Code §25110 makes it unlawful to offer or sell nonexempt,
16 unqualified securities. That section states:

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

24 Corporations Code §25535 states:

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

29 24. Beginning at an exact date that is unknown to plaintiff; but at least since
30 December 27, 1999, and continuing until at least July 3, 2001, Palmieri, C. Palmieri
31 Enterprises, Inc., National Medical Funding, Trust Management Services, Sierra Funding
32 Group, Sierra Funding Group, Inc., Shearburn, Innovative Financial Services, Inc. and Reed
33 unlawfully offered and sold to more than 20 residents of the State of Arizona and California

1 unqualified, nonexempt securities in the form of viatical investments issued by National
2 Medical Funding amounting to more than \$3,000,000 in investment money. The
3 investments were to be repaid by National Medical Funding upon "maturity" or the death of
4 the viator, in addition to a pre-negotiated interest. Most investors were told, however, that
5 their investment would be repaid within 12-18 months based on life expectancy evaluations
6 by National Medical Funding. To date, none of the investors have received a return of any
7 principal from National Medical Funding. In addition, many investors were told that they
8 would be paid within 30 days after the investment had "matured," meaning the viator died,
9 and in spite of being informed of the maturity of the investment, no money has been repaid.

10 25. Defendants' pattern of conduct, as set forth above, demonstrates the
11 necessity for granting injunctive and ancillary relief restraining such and similar acts in
12 violation of §25110, and providing restitution or disgorgement to investors, as well as
13 imposition of appropriate civil penalties.

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

16 **THIRD CAUSE OF ACTION**

17 UNLAWFUL OFFER AND SALE OF SECURITIES BY MEANS OF
18 UNTRUE STATEMENTS OR OMISSIONS OF MATERIAL FACT
(Corporations Code §25401)
19 AS AGAINST ALL DEFENDANTS, EXCEPT CC&K

20 26. Plaintiff realleges and incorporates herein by reference paragraphs 1 through
21 25, inclusive, as though set forth at length herein.

22 27. Corporations Code §25401 makes it unlawful to offer or sell securities by
23 means of untrue statements or omissions of material fact. This section states:

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

27 28. Beginning at an exact date that is unknown to plaintiff; but at least since
28 December 27, 1999, and continuing until at least July 3, 2001, defendants Palmieri, C.

1 Palmieri Enterprises, Inc., National Medical Funding, Trust Management Services, Sierra
2 Funding Group, Sierra Funding Group, Inc., Shearburn, Innovative Financial Services, Inc.
3 and REED, offered and sold to California's investing public securities in the form of viatical
4 settlement contracts issued by National Medical Funding by means of untrue statements of
5 material fact and omissions of material facts. Palmieri, Shearburn and Reed engaged in this
6 course of business under the fictitious business name of National Medical Funding and/or
7 C. Palmieri Enterprises, Inc., both owned and controlled by Palmieri.

8 29. Palmieri, C. Palmieri Enterprises, Inc., National Medical Funding, Trust
9 Management Services, Sierra Funding Group, Sierra Funding Group, Inc., Shearburn,
10 Innovative Financial Services, Inc. and Reed offered and sold the viatical settlement
11 contracts by representing to these prospective investors that they had professional skill and
12 work experience relating to investments and management of personal finances. Palmieri,
13 Shearburn and Reed, further recommended to these prospective investors that they
14 purchase the viatical settlement contracts issued by National Medical Funding, a company
15 owned and controlled.

16 30. Palmieri and Shearburn, the agent for Palmieri and National Medical Funding,
17 represented to prospective investors that National Medical Funding would use the
18 investment proceeds to purchase beneficiary interests in insurance policies of dying people.
19 Defendants, specifically including Palmieri and Shearburn, made misrepresentations of
20 material facts, including, but not limited to the following:

21 a. The investment was safe and low risk. In fact, the investment was not
22 safe and low risk. Insurance company may not ultimately pay the proceeds, because of
23 improper assignment of the benefits, fraud in procurement of the policy or supporting
24 medical evaluations, and failure to continue paying the policy premiums.

25 b. The investment will provide higher than stock market or money market
26 returns, from 14% up to 48.15% returns. In fact, the actual rate of return is ultimately
27 dependent on the life of the viator. The longer the viator lives, the less the rate of return
28 becomes.

1 c. The investment is “completely insured”. In fact, there was no separate
2 insurance policy guaranteeing the investment proceeds should the insurance company not
3 ultimately pay the proceeds because of such events as improper assignment of the benefits,
4 fraud in procurement of the policy or supporting medical evaluations or failure to continue
5 paying the policy premiums.

6 d. The investment is “backed by a State Guarantee Insurance Fund.” In
7 fact, the State Guarantee Insurance Fund is only available if the insurance company issuing
8 the policy goes out of business but does not cover events such as improper assignment of
9 the benefits, fraud in procurement of the policy or supporting medical evaluations or failure
10 to continue paying the policy premiums.

11 e. The “dollars and yield” are “secured” by a separate insurance policy
12 with an “A” or better rated insurance company, In fact, there was no additional “insurance
13 policy” guaranteeing the principal or interest.

14 f. The investment is backed by a “separate fidelity bond.” In fact, no bond
15 was obtained.

16 g. The investment is “completely liquid,” “100% liquid with no fees or
17 surrender charges.” In fact, the investment is not liquid at all, but the money invested is
18 unavailable during the lifetime of the viator.

19 h. Principal and profit would be returned “10 to 30 days after maturity.” In
20 fact, none of the investors have received a return of principal or interest, and some have
21 been informed by defendants that the investment had “matured,” i.e. the viator died.

22 i. There is “zero market risk.” In fact, the investment is risky because it
23 relies solely on the activities of defendants, namely Palmieri and National Medical Funding.

24 j. Participation funds are deposited with “an independent bonded
25 trust/escrow agent.” In fact, the “trust/escrow agent” was Trust Management Services, an
26 unlicensed escrow “shell” company and fictitious business name and alter ego of Palmieri
27 and C. Palmieri Enterprises, Inc. Although investors were told the business address of
28 Trust Management Services was in San Francisco, California, the “address” was nothing

1 more than a mail drop box and a San Francisco telephone number that was answered in the
2 Palmieri offices in San Diego.

3 k. Investment funds become a “guaranteed receivable of principal and
4 profit combined” of the trust. In fact, Trust Management Services was nothing more than an
5 alter ego company controlled by Palmieri.

6 31. Defendants, and each of them, made the above misrepresentations of fact to
7 the investors with full knowledge of the truth, as indicated in Paragraph 30. To date, none
8 of the investors have received a return of their principal or interest, as promised. In addition,
9 although several investors were told months or years ago that their investment had
10 “matured” i.e. the viator had died, they have received no payments as was promised when
11 they purchased the security.

12 32. Defendants’ pattern of conduct, as set forth above, demonstrates the
13 necessity for granting injunctive and ancillary relief restraining such and similar acts in
14 violation of §25401, and providing restitution or disgorgement to investors, as well as
15 imposition of appropriate civil penalties.

16 33. Corporations Code §25535 states:
17 (a) Any person who violates any provision of this law, or who violates any
18 rule or order under this law, shall be liable for a civil penalty not to exceed
19 twenty-five thousand dollars (\$25,000) for each violation, which shall be
20 assessed and recovered in a civil action brought in the name of the people of
21 the State of California by the commissioner in any court of competent
22 jurisdiction.

23 34. Defendants, and each of them, have violated the securities laws in the State of
24 California, as alleged in the First, Second and Third Causes of Action, alleged above. As a
25 result, defendants’ pattern of conduct, as set forth above, demonstrates the necessity for
26 granting permanent injunctive and ancillary relief restraining such and similar acts in
27 violation of §25210, and providing restitution or disgorgement to investors, as well as
28 imposition of appropriate civil penalties.

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

FOURTH CAUSE OF ACTION

UNLICENSED ESCROW AGENT ACTIVITY
(Financial Code §17000, *et seq.*)
AS AGAINST CARMEN J. PALMIERI
AND/OR C. PALMIERI ENTERPRISES, INC.,
DOING BUSINESS AS TRUST MANAGEMENT SERVICES

35. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 33, inclusive, as though set forth at length herein.

36. Financial Code § 17200 sets forth the escrow agent licensure requirement as follows:

It shall be unlawful for any person to engage in business as an escrow agent within the State except by means of a corporation duly organized for that purpose licensed by the commissioner as an escrow agent.

37. Beginning at an exact date that is unknown to plaintiff, but ongoing and continuing until the date of this Complaint, Palmieri and C. Palmieri Enterprises, Inc., were each an owner and controller of Trust Management Services a fictitious business name for these defendants and an alter ego of Palmieri and C. Palmieri Enterprises, Inc. Trust Management Services was listed on business documents as located in San Francisco when, in fact, it was operated from the Palmieri offices in San Diego. Trust Management Services unlawfully engaged in the business of effecting escrow transactions as an escrow agent in the State of California by acting in such capacity without conducting operations as a duly-licensed corporation, without securing from the Corporations Commissioner a license authorizing such escrow agent activity and without complying with the licensing provisions of the Escrow Law, including, but not limited to, Financial Code §17202 (bonding) and §17210 (net worth). None of the defendants is exempt from the requirements of the Escrow Law as it relates to the activities complained of herein.

38. Defendants' unlawful acts include, but are not limited to, performing escrow agent services for private individuals and companies, namely receiving money from investors in viatical settlement contracts and allegedly holding documentation relating to the viatical investments and processing payments to the investors upon maturity of the investment, for which Trust Management Services (Palmieri) obtained a fee for the unlawful

1 escrow services performed. Defendants, and each of them, have operated in this capacity
2 for many years, handling hundreds of transactions, without obtaining the required license.

3 39. Plaintiff is informed and believes, and on that basis alleges, that unless
4 enjoined by the Court, defendants will continue to perform escrow agent services indefinitely
5 into the future, without obtaining the required license and without complying with the
6 provisions of the Escrow Law, which was enacted in the interests of protecting members of
7 the public who may require the services of an escrow agent or escrow company.

8 40. Financial Code §17607 permits the Commissioner to bring this action in the
9 name of the people of the State of California to “enjoin the acts or practices or to enforce
10 compliance with this law or any rule or order hereunder” Remedies may include
11 injunctive and equitable relief and “ancillary relief may be granted as appropriate.”

12 41. Financial Code §17701 states:
13 Any person who violates any provision of this division, or who violates any
14 rule or order under this division, shall be liable for a civil penalty not to
exceed two thousand five hundred dollars (\$2,500) for each violation

15 42. Defendants’ pattern of conduct, as set forth above, demonstrates the
16 necessity for granting injunctive and ancillary relief restraining such and similar acts in
17 violation of the Escrow Law, and imposing the maximum penalty allowed by law.

18 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, as
19 set follows:

20 **AS AGAINST ALL DEFENDANTS:**

21 1. For a temporary restraining order and order of preliminary injunction
22 restraining and enjoining all Defendants, their officers, directors, successors in interest,
23 agents, employees, attorneys in fact, and all persons acting in concert or participating with
24 them, or any of them, except the Receiver in the lawful exercise of his duties under the
25 receivership, from directly or indirectly:

26 a. Violating Corporations Code Section 25210 by effecting transactions in,
27 attempting to induce or attempt to induce the purchase or sale of any security without
28 having obtained a license as a broker-dealer from the Commissioner of Corporations;

1 b. Violating Corporations Code Section 25110 by offering or selling or
2 buying or offering to buy viatical settlements, investment contracts or any other securities
3 without that security being qualified pursuant to the Corporate Securities Law of 1968, or
4 unless exempt;

5 c. Violating Corporations Code Section 25401 by offering or selling or
6 buying or offering to buy viatical settlements, investment contracts or any other securities by
7 means of any written or oral communication which includes an untrue statement of a
8 material fact or omits to state a material fact necessary in order to make the statements
9 made, in light of the circumstances under which they were made, not misleading.

10 d. Violating Financial Code sections 17000, *et seq.* by performing escrow
11 agent services and operating an unlicensed escrow company without first obtaining a
12 license for that purpose from the California Corporations Commissioner.

13 e. Removing, destroying, mutilating, concealing, altering, transferring, or
14 otherwise disposing of, in any manner, any books, records, documents, correspondence,
15 brochures, manuals, or other documentation of any kind in the possession, custody or
16 control of any of the Defendants.

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

23 g. Withdrawing from any bank account, transferring, changing, disbursing,
24 selling, dissipating, converting, pledging, assigning, foreclosing, or otherwise disposing of
25 any real property or personal property in their possession or under their control, or in the
26 possession of, or under the control of, any of the Defendants, which property or other assets
27 were derived or emanated from directly, or indirectly, the sale or purchase or offer to sell or
28

1 purchase viatical settlements or any other security under California law, investment
2 contracts or other securities.

3 2. For an Order that, pursuant to section 25535 of the Corporations Code
4 Defendants, and each of them, individually, jointly and severally, pay to the Department of
5 Corporations, a civil penalty in the maximum sum of \$25,000 (Twenty-five Thousand
6 Dollars) for each act in violation of Corporations Code Section 25110, and a maximum of
7 \$25,000 (Twenty-five Thousand Dollars) for each act in violation of Corporations Code
8 Section 25401, as authorized by Corporations Code Section 25535.

9 3. For an Order that Defendants, Palmieri, C. Palmieri Enterprises, Inc., Palmieri
10 doing business as Trust Management Services, National Medical Funding and Palmieri
11 doing business as National Medical Funding, and each of them, individually, jointly and
12 severally, pay to the Department of Corporations, a civil penalty in the maximum sum of
13 \$2,500 (Two Thousand Five Hundred Dollars) for each act in violation of Financial Code
14 Section 17000, *et seq.*, as authorized by Financial Code Section 17602.

15 4. That pursuant to section 25530(b) of the Corporations Code defendants, and
16 each of them, be ordered to disgorge all profits and compensation obtained as a result of
17 the violations of law complained of herein, all in the amounts and manner provided for by
18 law.

19 **AS AGAINST DEFENDANTS CARMEN J. PALMIERI, C. PALMIERI ENTERPRISES,**
20 **INC., TRUST MANAGEMENT SERVICES, NATIONAL MEDICAL FUNDING, CC&K**
21 **TRUST:**

22 1. For a Temporary Restraining Order and Permanent Injunction placing an
23 immediate freeze on all funds, negotiable instruments and/or assets held in any bank or
24 other accounts, certificates of deposit or otherwise, without limitation, in the name of or for
25 the benefit of defendants Palmieri, C. Palmieri Enterprises, Inc., Trust Management
26 Services, National Medical Funding, CC&K Trust directly or indirectly, and each of them.

27 2. For an Order Appointing a Receiver *ex parte*, without notice, during the
28 pendency of this action or until further order of the court, to take possession of all real and

1 personal property and assets of defendants Palmieri, C. Palmieri Enterprises, Inc., National
2 Medical Funding Trust Management Services and CC&K Trust, whether directly or indirectly
3 owned, beneficially or otherwise by, or in the possession, custody or control of defendants,
4 and each of them, and such Does as may be subsequently named (hereinafter "receivership
5 defendants"), and their respective subsidiaries and affiliates, and their successors and
6 assigns wherever situated, or to which receivership defendants have any right of
7 possession, custody or control, beneficially or otherwise, irrespective of whosoever holds
8 such assets, including all such assets which receivership defendants carry or maintain, or
9 which may be received during the pendency of this receivership, in order to obtain an
10 adequate accounting of receivership defendants' assets and liabilities and to secure a
11 marshalling of said assets; and

12 FOR SAID ORDER TO FURTHER PROVIDE THAT:

13 A. The receiver, prior to entry of his duties, shall take an oath to support the
14 constitutions of the United States and the State of California and shall be bonded according
15 to law.

16 B. The receiver shall be authorized, empowered and directed:

17 1. To marshal, collect, review, observe, discover and take charge of all the
18 real and personal property, premises and other assets of, or in the possession of or under
19 the control of receivership defendants, beneficially or otherwise, or wherever else situated,
20 all accounts of receivership defendants in financial depository or other institutions, and of
21 any other property in which receivership defendants have an interest, regardless by whom it
22 may be held, beneficially or otherwise, on an ongoing and continual basis pursuant to this
23 court's order. The receiver shall report to this Court the results of the review, observation,
24 discovery and abstracts resulting from the activities of the receiver as ordered by this Court,
25 and specifically on any commingling of funds, unauthorized loans or other disposition of
26 property of whatever description between any and each of the receivership defendants
27 herein and/or any person, corporation, entity, sole proprietorship, affiliate, association of
28

1 whatever type or structure, whether or not said entities are or are not defendants in this
2 action;

3 2. To employ attorneys to assist the receiver in the performance of his
4 duties and responsibilities, such employment to be approved by the Court upon ex parte
5 application of the receiver;

6 3. To employ other such persons, including accountants, investigators,
7 clerical and professional personnel, and the receiver's in-house staff and counsel, to
8 perform such tasks as may be necessary to aid the receiver in the performance of his duties
9 and responsibilities, without further order of the court;

10 4. To file, within 30 days of his qualification and appointment hereunder,
11 an initial inventory of all property which he shall then have reviewed, observed and/or
12 discovered pursuant to this Court's order. Additionally, the receiver is to file one or more
13 supplemental inventories when and if he shall subsequently come into knowledge of
14 additional items appropriate to the inventory;

15 5. To undertake an independent review into the affairs and transactions of
16 receivership defendants and to file with this Court, within 120 days, and every six months
17 thereafter, a report detailing the receiver's findings of his review of the condition of
18 receivership defendants, other affairs and transactions of receivership defendants, reflecting
19 the existence of any liabilities, both those claimed by others to exist and those to which the
20 receiver believes to be the legal obligations of each of said receivership defendants,
21 including a review of any possible conflicts of interest and any further information the
22 receiver believes may assist in an equitable disposition of this matter, and to include in the
23 report the receiver's opinion regarding the ability of said receivership defendants to meet
24 their obligations as they come due, and the receiver's recommendation regarding the
25 necessity for, and the best method of handling, preserving, or disposing of said assets;

26 6. To invest funds of the receivership estate in any interest-bearing
27 obligations of the United States or in any interest-bearing accounts in financial institutions
28 approved by the United States Trustee as an authorized depository for funds of bankruptcy

1 estate, without further order of the Court; and to be the signatory on all bank accounts of
2 receivership defendants, and each of them;

3 7. To bring such proceedings as are necessary to enforce the provisions
4 hereof, including issuance of subpoenas to compel testimony or production of documents as
5 to the existence or location of assets or any other information pertinent to the business,
6 financial affairs, and other transactions of receivership defendants;

7 8. To bring such proceedings as are necessary to modify the provisions
8 hereof, as the receiver deems appropriate;

9 9. To make such payments and disbursements from the funds so taken
10 into custody, control and possession of the receiver or otherwise received by him, as may
11 be necessary and advisable in discharging his duties as receiver, without further order of
12 the court, including, without limitation, the payment of interim compensation to the receiver
13 and persons or entities under (b) and (c) above, subject to the provisions of paragraph 11;

14 10. To carry on any lawful business activity of the entities and persons or
15 entities in receivership, to preserve investors' assets and to foreclose and/or actively seek
16 and negotiate with potential buyers, assignees or other parties who may be interested in
17 acquiring, purchasing, leasing, subleasing or renting real or personal property of defendants
18 and to sell, lease, sublease or rent such real or personal property of defendants, subject to
19 court approval;

20 11. To institute, prosecute, defend, compromise, intervene in and become a
21 party, either in his own name or in the name of defendants, to such suits, actions or
22 proceedings as may be necessary for the protection, maintenance, recoupment or
23 preservation of the assets or property of receivership defendants, or in his custody, in his
24 discretion, without further order of the Court; and

25 12. To divert, take possession of and secure all mail of receivership
26 defendants, in order to screen such mail, retaining so much as relates to the business of
27 receivership defendants, and forwarding to the individual or other appropriate addresses so
28 much as is not, in the receiver's opinion, appropriate for retention by him, and to effect a

1 change in the rights to use any and all post office boxes and other mail collection facilities
2 used by receivership defendants; and

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

15 14. The receiver shall cooperate fully with the California Department of
16 Corporations, and any other state and federal law enforcement and regulatory agencies
17 having jurisdiction over matters relating to the conduct or business of defendants so as not
18 to impair the ability of said state and federal law enforcement regulatory agencies to perform
19 their duly authorized investigative and enforcement duties.

20 15. The receiver's powers shall be in addition to, and not by way of
21 limitation of, the powers described in Corporations Code Section 29540 and 25530(a),
22 Financial Code Section 22713, and Government Code Section 13975.1 and Code of Civil
23 Procedure Sections 564, et seq.

24 16. The receiver shall be vested with, and is authorized, directed and
25 empowered to exercise, all of the power of receivership defendants, their officers, directors,
26 shareholders, general partners or persons who exercise similar powers and perform similar
27 duties; and that receivership defendants, their officers, agents, employees, representatives,
28 directors, successors in interest, attorneys in fact and all persons acting in concert or

1 participating with them, are hereby divested of, restrained and barred from exercising any of
2 the powers vested herein in the receiver.

3 17. Any state or federal law enforcement or regulatory agency having
4 jurisdiction over matters relating to defendants' business shall be permitted to review,
5 without exception, all reports of the receiver and all books, records, and files of defendants
6 at any time during normal business hours, with reasonable notice, and to make any
7 abstracts or copies of said documents as it desires, provided that nothing herein shall waive
8 or abrogate any applicable attorney-client or other legally recognized privilege; and

9 18. Defendants, including, but not limited to the receivership defendants,
10 their officers, directors, shareholders, agents, servants, employees, attorneys,
11 salespersons, successors, assigns, subsidiaries, affiliates, and other persons or entities
12 under their control and all persons or entities in active concert or participation with
13 defendants, and all persons owing a duty of disclosure to defendants, and each of them,
14 shall cooperate with the receiver in his investigation and turn over to the receiver records,
15 documentation, charts and/or descriptive material of all funds, assets, property owned
16 beneficially or otherwise, and all other assets of receivership defendants wherever situated,
17 and all books and records of accounts, title documents and other documents in the
18 possession or under their control, which relate, directly or indirectly, to assets of
19 receivership defendants; and

20 19. Except by leave of this Court and during the pendency of this
21 receivership, all claimants, creditors and other persons seeking relief of any kind, in law or in
22 equity, from receivership defendants, and all others acting on behalf of any such persons,
23 including sheriffs, marshals, servants, agents and employees, are restrained from:

- 24 a. Commencing, prosecuting, continuing or enforcing any suit or
25 proceeding, except by motion before this court;
- 26 b. Executing or issuing or causing the execution or issuance of any
27 court attachment, subpoena, replevin, execution or other process for the purpose of
28 impounding or taking possession of or interfering with or creating or enforcing a lien upon

1 any property owned or in the possession of receivership defendants, its subsidiaries or
2 affiliates, or the receiver appointed therein, wherever situated;

3 c. Commencing or continuing judicial or non-judicial foreclosure
4 proceedings or proceedings for the appointment of a receiver for any property owned or
5 claimed by receivership defendants in this action;

6 d. Creating, perfecting, or enforcing any lien or encumbrance
7 against any real or personal property;

8 e. Accelerating the due date of any obligation or claimed obligation;

9 f. Exercising any right of set-off;

10 g. Taking, retaining, retaking or attempting to retake possession of
11 any real or personal property;

12 h. Withholding or diverting any rent or other obligation; and

13 i. Doing any act or thing whatsoever to interfere with the
14 possession of or management by the receiver herein and of the property and assets owned,
15 controlled or in the possession of receivership defendants or to, in any way, interfere with
16 the receiver or to interfere in any manner during the pendency of this proceeding with the
17 exclusive jurisdiction of this Court over defendants.

18 j. Any and all provisions of any agreement entered into by and
19 between any third party and receivership defendants, including, by way of illustration, but
20 not limited to, the following types of agreements (as well as any amendments or
21 modifications thereto), mortgages, partnership agreements, financial guarantee bonds, joint
22 venture agreements, promissory notes, remarketing agreements, loan agreements, security
23 agreements, indemnification agreements, subrogation agreements, subordination
24 agreements, deeds of trust, pledge agreements, assignments of rents and other collateral,
25 financing statements, letters of credit, leases, insurance policies, guarantees, escrow
26 agreements, management agreements, real estate brokerage and rental agreements,
27 servicing agreements, consulting agreements, easement agreements, license agreements,
28 franchise agreements, construction contracts, or employment contracts that provide in any

1 manner that the selection, appointment, or retention of a receiver or trustee by any court, or
2 the entry of an order such as hereby made, shall be deemed to be, or otherwise operate as
3 a breach, violation, event of default, termination, event of dissolution, event of acceleration,
4 insolvency, bankruptcy, or liquidation, shall be stayed, and the assertion of any and all
5 rights, remedies relating thereto shall also be stayed and barred, except as otherwise
6 ordered by this Court, and this Court shall retain jurisdiction over any causes of action that
7 have arisen or may otherwise arise under any such provision.

8 k. The receiver, the receiver's employees and agents, and
9 professionals employed by the receiver, are entitled to monthly payment of interim
10 compensation for services rendered, at their normal hourly rates, and monthly
11 reimbursement for all expenses incurred by them on behalf of the receivership estate, and
12 the receiver is authorized to make such payments without further order of the court. Within
13 10 days after such monthly payments, the receiver shall serve written notice upon the
14 counsel of record for receivership defendants of the amount paid to each payee, with an
15 itemization of the services rendered or expenses incurred.

16 l. Interim monthly fees paid shall be subject to review and approval
17 by this Court, on a quarterly basis. This Court retains jurisdiction to award a greater or
18 lesser amount as the full, fair and final value of such services. In the event that
19 extraordinary services are performed by the receiver, or any professionals employed by the
20 receiver, the Court may approve extraordinary compensation to such persons.

21 C. Neither Plaintiff, the Commissioner of Corporations, the State of
22 California, the Department of Corporations, nor any officer, employee or agent of the
23 Department, shall have any liability for the payment, at any time, for any such fees or
24 expenses in connection with said receivership.

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- 3. That plaintiff recover its costs of suit herein, including costs of investigation;
- 4. For such and further relief as the court may deem just and proper.

Dated: March 11, 2003

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By: _____
JAMES K. OPENSHAW
Attorney for the People of the
State of California