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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA, by and through the
COMMISSIONER OF BUSINESS
14 OVERSIGHT,
15 Plaintiff,
16 vs.
17 MARTIANS INCORPORATED, a California
corporation;
18 DANNY JAY SCHEUER, aka DANIEL
SCHEUER, DAN SCHEUER, DAN J.
19 SCHEUER, DANIEL J. SCHEUER, and DAN
SHIRE, an individual; and
20 DOES 1 through 10, inclusive,
21 Defendants.

Case No.:
COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTION; CIVIL
PENALTIES; AND ANCILLARY RELIEF
VIOLATIONS OF DESIST AND REFRAIN
ORDERS ISSUED BY THE COMMISSIONER
VIOLATIONS OF CORPORATIONS CODE
SECTION 25110 (UNQUALIFIED, NON-
EXEMPT OFFER AND SALE OF
SECURITIES)
VIOLATIONS OF CORPORATIONS CODE
SECTION 25401 (MISREPRESENTATIONS
AND OMISSIONS IN THE OFFER AND
SALE OF SECURITIES)

25 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), acting to
26 protect the public from the unlawful and fraudulent offer or sale of securities, brings this action in
27 the public interest in the name of the People of the State of California. The People of the State of
28 California allege:

I.

Introduction

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3 1. For thirteen years, beginning in at least 2003 and continuing until at least 2016,
4 defendants unlawfully offered and sold securities to members of the public. Defendants told
5 potential investors that the purpose of the securities offering was to raise money to develop
6 fictional characters, called “the Mighty Martians,” for live and animated entertainment.
7 Defendants touted their past business experience as proof of the future success of the Mighty
8 Martians.

9 2. However, what defendants failed to tell potential investors is that three government
10 regulators – the United States Commodity Futures Trading Commission, the Pennsylvania
11 Securities Commission, and California Department of Business Oversight – previously had issued
12 administrative orders against defendants for violating state securities laws and obtained a civil
13 judgment against one of the defendants for violating federal commodities laws.

14 3. Over the thirteen-year period, defendants continued to offer and sell securities
15 despite the issuance of multiple administrative orders directing defendants to stop offering and
16 selling securities. Defendants will continue their unlawful conduct unless enjoined by this Court.

17 II.

Venue and Jurisdiction

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19 4. The Commissioner in her capacity as head of the Department of Business
20 Oversight (DBO), brings this action to enjoin the defendants from violating the Corporate
21 Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.) and to request necessary civil
22 penalties and ancillary relief, including restitution to investor-victims. The Commissioner is
23 authorized to administer and enforce the provisions of the CSL.

24 5. The Commissioner brings this action pursuant to CSL sections 25530 and 25535
25 and Government Code section 11180 et seq. in her capacity as head of the DBO.

26 6. The defendants transacted and continue to transact business throughout the State of
27 California and the County of Los Angeles. The violations of law described herein occurred and
28 will continue to occur throughout California and the County of Los Angeles unless enjoined.

1 **III.**

2 **Defendants**

3 7. Defendant Martians Incorporated (Martians) is a California corporation,
4 incorporated January 29, 2003, that at all relevant times maintained an address in California.

5 8. Defendant Danny Jay Scheuer, also known as Daniel Scheuer, Dan Scheuer, Dan J.
6 Scheuer, Daniel J. Scheuer, and Dan Shire, (Scheuer) is an individual who at all relevant times
7 resided in California. Scheuer is the control person, and president of Martians.

8 9. Defendants sued herein under the fictitious names Does 1 through 10, inclusive, are
9 unknown to the Commissioner who therefore sues such defendants by such fictitious names,
10 pursuant to Code of Civil Procedure section 474. The Commissioner is informed and believes, and
11 on such information and belief alleges, that at all times mentioned herein, Does 1 through 10,
12 inclusive, acted and continue to act in concert with the defendants named herein, and each of them
13 participated in the acts and transactions that are the subject of this Complaint. The Commissioner
14 asks leave of the court to amend the Complaint and allege the true names and capacities of such
15 defendants at such time as the same have been ascertained.

16 10. The Commissioner is informed and believes and based thereon alleges that at all
17 relevant times, the defendants named as control people, officers, directors, managers, managing
18 members, agents or employees acted in such capacities in connection with the acts, practices, and
19 schemes of business set forth below.

20 11. Whenever any allegation herein is made as to a "Defendant," the allegation shall
21 mean the act of each individual defendant acting individually, jointly and severally and conspiring
22 with the defendants to so act. Each defendant alleged to have committed any act did so pursuant to
23 and in furtherance of a common plan, scheme and conspiracy and as the agent for each and every
24 co-defendant. Each defendant acts in conspiracy to violate the provisions of the CSL.

25 12. The Commissioner is informed and believes and based thereon alleges that at all
26 relevant times, each and every defendant directly or indirectly knowingly controlled other co-
27 defendants, employees, agents or representatives, or knowingly provided substantial assistance to
28 other co-defendants, employees, agents, or representatives, to violate the provisions of the CSL, as

1 alleged in the Complaint within the meaning of CSL section 25403.

2 13. Wherever any allegation is made in this Complaint to Martians doing any act, the
3 allegation shall mean acts done or authorized by the control people, officers, directors, managers,
4 managing members, agents or employees of Martians while actively engaged in the management,
5 direction or control of the affairs of Martians, and while acting within the course and scope of their
6 employment.

7 14. The Commissioner is informed and believes and based thereon alleges that at all
8 times herein mentioned, Martians continued in existence as the alter ego of the other defendants
9 pursuant to a scheme to offer or sell unqualified, non-exempt securities by means of
10 misrepresentations and/or omissions of material fact in violation of the CSL and administrative
11 desist and refrain orders issued by the Commissioner pursuant to the CSL.

12 15. At all relevant times, Martians was so influenced and controlled by the other
13 defendants in the conduct of their business and affairs that there existed a unity of interest and
14 ownership among said parties so the adherence of the fiction of separate corporate and individual
15 existence serves to work an injustice upon the public.

16 **IV.**

17 **Facts**

18 16. For thirteen years, beginning in at least 2003 and continuing until at least 2016,
19 Scheuer, Martians, and their agents, employees and representatives (Defendants) offered and sold
20 securities to at least 67 investor-victims, raising a total of at least \$921,996.59. Of those investor-
21 victims, 28 were California residents, from whom Defendants raised at least \$510,856.59. Seven
22 investor-victims were residents of the County of Los Angeles, from whom Defendants raised at
23 least \$181,486.59.

24 17. Defendants offered and sold securities, in the form of debentures, shares of stock,
25 and warrants to purchase stock.

26 18. The purported purpose of Defendants' offer and sale of securities to investor-
27 victims was to develop, market, and license fictional characters called the Mighty Martians for live
28 and animated entertainment.

1 19. Defendants offered and sold securities to investor-victims with whom Defendants
2 had no pre-existing business or personal relationship within the meaning of the CSL. Defendants
3 used general solicitations, including telephone cold-calls, to offer and sell securities to the public.

4 20. Defendants offered and sold securities to investor-victims who lacked the requisite
5 business or financial experience deemed necessary to protect their own interests in the securities
6 transactions.

7 21. On November 10, 2004 and February 14, 2006, Martians and Scheuer filed with the
8 DBO notices of exemption, claiming a 12-month exemption to the statutory requirement that
9 securities offered or sold in California be qualified, or registered. However, Defendants failed to
10 comply with the terms of the exemption because Defendants used general solicitations to offer and
11 sell securities to investor-victims and investor-victims lacked the requisite business or financial
12 experience deemed necessary to protect their own interests in the securities transactions.

13 Therefore, Defendants' offer and sale of securities during those periods of time were not exempt.

14 22. On November 10, 2005, Martians and Scheuer submitted an application to the
15 DBO for a permit to offer and sell securities, in the form of stock and warrants, in California. An
16 applicant for a permit must disclose during the permit process all facts that a reasonable investor
17 would consider important in reaching an investment decision. On March 1, 2006, the DBO granted
18 a permit allowing Martians and Scheuer to offer and sell securities in California from November
19 10, 2005 through November 10, 2006. With the exception of the 12-month period of time the
20 permit was in effect, the securities offered or sold by Martians were not qualified as required by
21 the CSL.

22 23. When applying for the permit, Martians and Scheuer failed to disclose to the DBO
23 that Scheuer was subject to an administrative order issued on September 16, 1982 by the
24 Commodity Futures Trading Commissioner (CFTC) and a civil action filed by the CFTC on May
25 24, 1984 which resulted in a final judgement against Scheuer, for violations of the Commodity
26 Exchange Act, and CFTC regulations.

27 24. Defendants offered and sold securities for the purported purpose of developing the
28 Mighty Martians and failed to disclose to potential investors, a number of material facts,

1 including:

2 a. On September 16, 1982, the CFTC issued an administrative order against
3 Scheuer, and others, requiring them to cease and desist from further violation of the Commodity
4 Exchange Act, and CFTC regulations, relating to commodities trading activity conducted under
5 the name F.G. Hunter & Associates (1982 CFTC Order);

6 b. On May 24, 1984, the CFTC filed a civil complaint in the U.S. District
7 Court, Central District of California, against Scheuer, and others, alleging violation of the
8 Commodity Exchange Act, and CFTC regulations in a case styled *U.S. Commodity Futures*
9 *Trading Commissioner v. F.G. Hunter & Associates et al.*, Case No. 84-3920 Kn (Px) (1984
10 CFTC Civil Action). In the 1984 CFTC Civil Action, the CFTC alleged that Scheuer, and others,
11 violated minimum financial requirements, book and recordkeeping retention requirements, and the
12 1982 CFTC Order;

13 c. On June 18, 1984, the U.S. District Court, Central District of California,
14 permanently enjoined Scheuer, and others, from further violations of the Commodity Exchange
15 Act, CFTC regulations, and 1982 CFTC Order (1984 CFTC Civil Judgement), and ordered them
16 to restore all money belonging to customers of F.G. Hunter & Associates;

17 d. On September 16, 1998, the Commissioner issued an administrative order
18 against Scheuer, Modern Marketing Company, Inc., and others, requiring them to desist and
19 refrain from further violations of the CSL section 25110, by offering or selling unqualified, non-
20 exempt securities to the public in California (1998 Commissioner Order). The 1998 Commissioner
21 Order was served on Scheuer;

22 e. On October 20, 2000, the Commissioner issued a second administrative
23 order against Scheuer, Modern Marketing Company, Inc., and others, requiring them to desist and
24 refrain from further violations of the CSL section 25401, by making misrepresentations or
25 omissions of material fact in the offer or sale of securities to the public (2000 Commissioner
26 Order). The 2000 Commissioner Order was served on Scheuer;

27 f. On March 6, 2012, the Pennsylvania Securities Commissioner issued an
28 administrative order against Martians, Scheuer, and F.G. Hunter, Inc. requiring them to cease and

1 desist from further violations of Pennsylvania law, by offering or selling unregistered, non-exempt
2 securities in the Commonwealth of Pennsylvania. (2012 Pennsylvania Order). According to the
3 2012 Pennsylvania Order, Martians, Scheuer, and others, offered or sold securities, in the form of
4 common stock and warrants, in Martians without a permit or exemption. The 2012 Pennsylvania
5 Order was served on Martians and Scheuer; and

6 g. On July 10, 2012, the Commissioner issued a third administrative order
7 against Martians, Scheuer, and F.G. Hunter, Inc. prohibiting them from offering or selling
8 unregistered, non-exempt securities and from making misrepresentations or omissions of material
9 fact to the public in the offer and sale of the securities. (2012 Commissioner Order) Specifically,
10 the 2012 Commissioner Order, found that Martians, Scheuer, and others, failed to disclose to
11 potential investors that the 2000 Commissioner Order and 2012 Pennsylvania Order were issued
12 against them for violations of state securities laws. The 2012 Commissioner Order was served on
13 Martians and Scheuer.

14 25. Notwithstanding the 1998 Commissioner Order and 2000 Commissioner Order
15 issued to Scheuer, Scheuer continued to offer and sell securities to the public in violation of the
16 1998 and 2000 Commissioner Orders and CSL sections 25110 and 25401.

17 26. Notwithstanding the 2012 Commissioner Order, Scheuer and Martians continued to
18 offer and sell securities to the public in violation of the 1998, 2000, and 2012 Commissioner
19 Orders and CSL sections 25110 and 25401 to at least 38 investor-victims, raising at least
20 \$300,396.59. Of those investor-victims, at least 10 were California residents, from whom
21 Defendants raised a total of at least \$65,856.59. At least three of these investor-victims were
22 residents of the County of Los Angeles, from whom Defendants raised a total of at least
23 \$15,486.59.

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V.

First Cause of Action

OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES

IN VIOLATION OF CORPORATIONS CODE SECTION 25110

(Against All Defendants)

27. The Commissioner incorporates by reference paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. CSL section 25110 provides, in pertinent part, as follows:

It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . unless such sale has been qualified . . . or unless such security or transaction is exempted or not subject to qualification under Chapter 1 [commencing with CSL section 25100] of this part.

(Corp. Code, § 25110.)

29. Beginning in at least 2003 and continuing until at least 2016, Defendants, and each of them, offered and sold investments to at least 67 investor-victims, in 161 separate transactions, raising at least \$921,996.59. Of those investor-victims, at least 28 were California residents. Defendants raised at least \$510,856.59 from the 28 California residents in at least 60 separate transactions.

30. The investments offered and sold by the Defendants are “securities” within the meaning of CSL section 25019. The securities include, but are not necessarily limited to, debentures, shares of stock, and warrants to purchase stock.

31. Defendants, and each of them, “offered and sold” the securities “within the state” of California within the meaning of CSL sections 25008 and 25017.

32. The sales of these securities were “issuer transactions” within the meaning of CSL sections 25010 and 25011.

33. From at least 2003 to November 09, 2005 and November 11, 2006 to at least 2016, the Defendants did not have a permit or other form of qualification from the Commissioner authorizing the offer or sale of the securities referred to in this Complaint.

34. From at least 2003 to at least 2016, Defendants’ securities offerings were not

1 exempt from the qualification requirements of CSL section 25110, because Defendants used
2 general solicitation to offer and sell securities to investor-victims and investor-victims lacked the
3 requisite business or financial experience deemed necessary to protect their own interests in the
4 securities transactions.

5 35. Unless enjoined by this Court, Defendants will continue to violate CSL section
6 25110.

7 **VI.**

8 **Second Cause of Action**

9 **MISREPRESENTATION OR OMISSION OF MATERIAL FACTS**

10 **IN VIOLATION OF CORPORATIONS CODE SECTION 25401**

11 **(Against All Defendants)**

12 36. Plaintiff incorporates by reference paragraphs 1 through 35 of this Complaint as
13 though fully set forth herein.

14 37. CSL section 25401 states:

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

20 (Corp. Code, § 25401.)

21 38. In connection with the offer and sale of the securities referred to in this Complaint,
22 Defendants, and each of them, made misrepresentations of material fact and/or omitted to state
23 material facts to some or all of the investor-victims. The misrepresentations and/or omissions
24 include but are not necessarily limited to, the following:

25 a. Defendants omitted to disclose that Scheuer was the subject of the 1982
26 CFTC Order;

27 b. Defendants omitted to disclose that Scheuer was the subject of the 1984
28 CFTC Civil Action;

c. Defendants omitted to disclose that Scheuer was the subject of the 1984
CFTC Civil Judgment;

1 (c) If, in the opinion of the commissioner, a person has violated or is violating
2 Section 25401, the commissioner may order that person to desist and refrain from
the violation.

3 (d) . . . If that person fails to file a written request for a hearing within 30 days from
4 the date of service of the order, the order shall be deemed a final order of the
5 commissioner and is not subject to review by any court or agency, notwithstanding
Section 25609.

6 (Corp. Code, § 25532.)

7 44. From at least 2003 to at least 2016, Scheuer violated the 1998 Commissioner
8 Order, by offering and selling unqualified, nonexempt securities in Martians to at least 67
9 investor-victims.

10 45. Unless enjoined, Scheuer will continue to violate the 1998 Commissioner Order.

11 46. From at least 2003 to at least 2016, Scheuer violated the 2000 Commissioner Order
12 by offering and selling securities to at least 67 investor-victims without disclosing the 1982 CFTC
13 Order, 1984 CFTC Civil Judgment, and 1998 Commissioner Order.

14 47. Unless enjoined, Scheuer will continue to violate the 2000 Commissioner Order.

15 48. From at least July 10, 2012 to at least 2016, Scheuer and Martians violated the
16 2012 Commissioner Order, by selling unqualified, non-exempt securities to at least 38 investor-
17 victims and failing to disclose to potential investors the 1982 CFTC Order, 1984 CFTC Civil
18 Action, 1984 CFTC Civil Judgment, 1998 Commissioner Order, 2000 Commissioner Order, 2012
19 Pennsylvania Order, and 2012 Commissioner Order.

20 49. Unless enjoined, Scheuer and Martians will continue to violate the 2012
21 Commissioner Order.

22 **VIII.**

23 **Prayer for Relief**

24 WHEREFORE, the Commissioner prays for a judgment against Defendants Martians
25 Incorporated, Danny Jay Scheuer, also known as Daniel Scheuer, Dan Scheuer, Dan J. Scheuer,
26 Daniel J. Scheuer, and Dan Shire, and Does 1 through 10, inclusive, as follows:

27 **A. Injunctive Relief for the Violations**

28 For an Order of Preliminary Injunction and, ultimately, a Permanent Injunction, pursuant

1 to Corporations Code section 25530, subdivision (a), restraining and enjoining Martians
2 Incorporated, Danny Jay Scheuer, also known as Daniel Scheuer, Dan Scheuer, Dan J. Scheuer,
3 Daniel J. Scheuer, and Dan Shire, and Does 1 through 10, inclusive, from, directly or indirectly:

4 1. Violating Corporations Code section 25110, by offering to sell, selling, arranging
5 for the sale of, issuing, engaging in the business of selling, or negotiating for the sale of any
6 security of any kind, including but not limited to, the securities described in this Complaint, unless
7 such security or transaction is qualified;

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

14 3. Violating the 1998 Commissioner Order, 2000 Commissioner Order, and 2012
15 Commissioner Order issued by the Commissioner of Business Oversight; and

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

21 **B. Rescission and Restitution**

22 For a Final Judgment requiring Martians Incorporated, Danny Jay Scheuer, also known as
23 Daniel Scheuer, Dan Scheuer, and Dan Shire, and Does 1 through 10, inclusive, to rescind each
24 and all of the unlawful transactions alleged in this Complaint, pursuant to Corporations Code
25 section 25530, subdivision (b), as shall be determined by this Court to have occurred, and further
26 requiring Martians Incorporated, Danny Jay Scheuer, also known as Daniel Scheuer, Dan Scheuer,
27 Dan J. Scheuer, Daniel J. Scheuer, and Dan Shire, and Does 1 through 10, inclusive, to pay full
28 restitution to each person determined to have been subject to acts, practices, or transactions which

1 constitute violations of the Corporate Securities Law of 1968, in an amount of at least
2 \$921,996.59, or according to proof, to at least 67 investor-victims. In addition, that Martians
3 Incorporated, Danny Jay Scheuer, also known as Daniel Scheuer, Dan Scheuer, and Dan Shire,
4 and Does 1 through 10, inclusive, pay the legal rate of interest on the principal amount invested by
5 each and every investor-victim from the date of their investments to the date of judgment herein.

6 **C. Civil Penalties**

7 For a Final Judgment requiring Martians Incorporated, Danny Jay Scheuer, also known as
8 Daniel Scheuer, Dan Scheuer, Dan J. Scheuer, Daniel J. Scheuer, and Dan Shire, and Does 1
9 through 10, inclusive, to pay the Department of Business Oversight \$25,000.00 as a civil penalty
10 for each act in violation of the Corporate Securities Law of 1968, pursuant to Corporations Code
11 section 25535, in an amount of at least \$3,800,000.00, or according to proof.

12 **D. Other Relief**

13 For such other and further relief as this Court may deem necessary and proper.

14 Dated: March 14, 2019

JAN LYNN OWEN
Commissioner of Business Oversight

16 By:

17 _____
ALEX M. CALERO
18 Senior Counsel
19 Attorney for the People of California
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