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**FILING FEE EXEMPT PER  
GOV. CODE SECTION 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ORANGE

12 THE PEOPLE OF THE STATE OF  
CALIFORNIA, by and through the  
13 COMMISSIONER OF FINANCIAL  
PROTECTION AND INNOVATION,

14 Plaintiff,

15 v.

16 TRYCERA FINANCIAL, INC., a Nevada  
17 corporation; RAYMOND ALLEN SMITH, an  
individual; and DOES 1 through 10, inclusive,

18 Defendants.  
19  
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21  
22  
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Case No.:

COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTION; CIVIL  
PENALTIES; AND ANCILLARY  
RELIEF~~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)

24 Clothilde V. Hewlett, the Commissioner of the Department of Financial Protection and  
25 Innovation (Commissioner), acting to protect the public from the unlawful and fraudulent offer or  
26 sale of securities, brings this action in the public interest in the name of the People of the State of  
27 California. The People of the State of California allege:  
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1 ///

2 **I.**

3 **Summary**

4 1. This case involves unlawful and fraudulent securities offerings by defendants,  
5 Trycera Financial, Inc. and its control person, Raymond Allen Smith, who raised over \$10 million  
6 from more than 70 investors located in California and elsewhere to ostensibly finance defendants’  
7 consumer credit repair business.

8 2. In soliciting members of the public to invest, defendants misled and deceived  
9 current and prospective investors about the profits they could expect to realize on their investment,  
10 claiming that monthly returns on the investment were “guaranteed” and would be as high as 38%.

11 3. In addition, defendants deceived investors about how the promised monthly returns  
12 would be generated. Investors were told that monthly returns would be derived from revenues of  
13 the consumer credit repair business, when the defendants instead used money from newer  
14 investors to pay monthly returns to previous investors.

15 4. To further generate investor interest in the defendants’ securities offerings, the  
16 defendants also misled prospective investors about their financial and business background by  
17 omitting to disclose multiple bankruptcies, a history of unprofitability, legal judgments, debts for  
18 unpaid wages, and liens.

19 5. None of the securities offerings were qualified with the Commissioner as required  
20 under California securities law. Nor were the securities offerings exempt from this qualification  
21 requirement, because the defendants solicited investments from members of the public through  
22 “cold calls” and advertising to the general public.

23 6. Because defendants’ securities offerings were not qualified by the Commissioner,  
24 investors did not receive information that must be provided under California securities law for the  
25 protection of investors.

26 7. In addition, many of the investors were unsophisticated and lacked the requisite  
27 business or financial experience necessary to protect their own interests in the securities  
28 transactions.



1 treasurer, and a director of Trycera.

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

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

14 18. Whenever any allegation herein is made as to a “Defendant,” the allegation shall  
15 mean the act of each individual defendant acting individually, jointly and severally and conspiring  
16 with the defendants to so act. Each defendant alleged to have committed any act did so pursuant to  
17 and in furtherance of a common plan, scheme and conspiracy and as the agent for each and every  
18 co-defendant. Each defendant acts in conspiracy to violate the provisions of the CSL.

19 19. The Commissioner is informed and believes, and on such information and belief  
20 alleges, that at all relevant times, each and every defendant directly or indirectly knowingly  
21 controlled other co-defendants, employees, agents or representatives, or knowingly provided  
22 substantial assistance to other co-defendants, employees, agents, or representatives, to violate the  
23 provisions of the CSL, as alleged in the Complaint within the meaning of CSL section 25403.

24 20. Wherever any allegation is made in this Complaint to Trycera doing any act, the  
25 allegation shall mean acts done or authorized by the control people, officers, directors, managers,  
26 managing members, agents or employees of Trycera while actively engaged in the management,  
27 direction or control of the affairs of Trycera, and while acting within the course and scope of their  
28 employment.



1           27.     In early 2009, after issuance of the 2008 Desist and Refrain Order, Smith left CRS  
2 & Associates and became Trycera’s president and chief executive officer.

3           28.     Trycera claims to be in the business of selling credit repair products and services to  
4 assist consumers in obtaining “the most accurate and complete credit profile possible.”

5           29.     Beginning in at least October 2009, Trycera, Smith, and their agents offered  
6 unqualified securities in the form of stock, promissory notes convertible to stock, and warrants to  
7 members of the public for the purported purpose of raising money for the expansion and operation  
8 of Trycera.

9           30.     In October 2016, the Commissioner ordered Smith and Trycera to desist and  
10 refrain from violating CSL section 25401 by offering securities to members of the public by  
11 means of misrepresentations or omissions of material fact (2016 Desist and Refrain Order).

12          31.     Specifically, the 2016 Desist and Refrain Order found that Smith and Trycera failed  
13 to disclose the 2008 Desist and Refrain Order to prospective investors in connection with the sale  
14 of securities in Trycera.

15          32.     In July 2017, Smith and Trycera were served with the 2016 Desist and Refrain  
16 Order. Neither party requested a hearing to challenge the order. In August 2017, the 2016 Desist  
17 and Refrain Order became final.

18          33.     Before service of the 2016 Desist and Refrain Order, from October 2009 to July  
19 2017, Trycera and Smith raised at least \$7,381,401.00 from the sale of securities in the form of  
20 stock, promissory notes convertible to stock, and warrants to at least 16 investors in 21  
21 transactions.

22          34.     After service of the 2016 Desist and Refrain Order, from July 2017 to May 10,  
23 2019, Trycera and Smith raised at least \$2,059,000.00 from the sale of securities in the form of  
24 stock, promissory notes convertible to stock, and warrants to at least 10 investors in 11  
25 transactions.

26           **2.     The Kiosk Sponsorship Offering**

27          35.     Beginning in at least February 2017, Trycera, Smith, and their agents, offered  
28 securities in the form of investment contracts called “Kiosk Sponsorships” to members of the

1 public.

2 36. Trycera and Smith purportedly developed a live agent kiosk which could be placed  
3 at strategic locations such as military bases, auto dealerships, and mortgage companies.

4 37. When a consumer was “turned down” for a car loan, mortgage loan, or other credit  
5 at these locations, the live agent kiosk could be used by the consumer to speak over a video call  
6 with a Trycera representative who would sell Trycera’s credit repair products and services to the  
7 consumer.

8 38. The live agent kiosks would generate revenue from the sale of Trycera’s credit  
9 repair products and services to the consumers who were turned down for credit.

10 39. The Kiosk Sponsorships offered by defendants allowed members of the public to  
11 invest in a live agent kiosk and receive a portion of the revenue generated by the live agent kiosk.

12 40. Trycera, Smith, and their agents represented to members of the public that money  
13 invested in the Kiosk Sponsorships would be part of a common enterprise and that investors could  
14 expect a profit as a result of their investment. Investors’ expectations of profits were interwoven  
15 with and dependent upon the success of Trycera and Smith.

16 41. To entice members of the public to invest in the Kiosk Sponsorships, Trycera and  
17 Smith touted their connection to the United States military. Advertising materials provided to  
18 prospective investors state: “Help Us, Help Our Veterans . . . Investing now in our military men &  
19 women can pay off big for you.”

20 42. Another advertisement states: “Trycera Financial was greenlighted to provide  
21 exclusive services to the Army and to-date are the only civilian company allowed to advertise on  
22 military bases. As a company we’re on a mission to help our veterans relieve their financial  
23 stressors as they protect our country or move into civilian life.”

24 43. In a December 7, 2019 video, Smith stated: “well the military found out about us  
25 and now we’re placing [live agent kiosks] on military bases, at [Veterans Affairs] career centers.”

26 44. Before service of the 2016 Desist and Refrain Order, from October 2009 to July  
27 2017, Trycera and Smith raised at least \$59,980.00 from the sale of securities in the form of Kiosk  
28 Sponsorships to at least four investors in four transactions.

1           45.     After service of the 2016 Desist and Refrain Order, from July 2017 to April 2020,  
2 Trycera and Smith raised at least \$1,266,000.00 from the sale of securities in the form of Kiosk  
3 Sponsorships to at least 47 investors in 58 transactions.

4           46.     As recently as August 2021, Trycera and Smith have claimed to be offering  
5 securities to members of the public. In an August 2021 video, Smith stated that “we’re currently  
6 raising capital right now.”

7           **3.     General Solicitation of Investors**

8           47.     Each of the Trycera securities offerings involved the general solicitation of  
9 prospective investors.

10          48.     Trycera and Smith hired salespeople and lead generators who were not licensed  
11 with the Financial Industry Regulatory Authority (FINRA) to offer and sell securities in Trycera.

12          49.     These unlicensed salespeople made cold calls to prospective investors about the  
13 securities offerings in Trycera.

14          50.     Trycera and Smith also solicited prospective investors over the internet using  
15 Trycera’s website and videos hosted on the video-sharing website YouTube, among other things.

16          51.     Smith personally communicated with investors and prospective investors about the  
17 securities offerings, including through telephone calls and emails.

18          52.     Trycera, Smith, and their agents offered securities to members of the public with  
19 whom Trycera and Smith had no pre-existing business or personal relationship.

20          53.     Many of the investors solicited by Trycera, Smith, and their agents were  
21 unsophisticated and lacked the business or financial experience necessary to protect their own  
22 interests in the securities transactions.

23          54.     The solicitation materials provided to some prospective investors by Trycera,  
24 Smith, and their agents included questionnaires regarding investor accreditation status. Trycera  
25 and Smith, however, did not take any steps to verify that investors who completed questionnaires  
26 were, in fact, accredited.

27          55.     For at least 52 investors, Trycera, Smith, and their agents did not provide  
28 questionnaires regarding investor accreditation status and Trycera and Smith did not take any



1 other steps to verify that these 52 investors were accredited.

2 56. None of the prospective investors, prior to the sale of the securities, were furnished  
3 with audited financial statements for Trycera.

4 57. Each of the Trycera securities offerings were offered or sold in California in issuer  
5 transactions.

6 58. The Commissioner has not issued a permit or other form of qualification  
7 authorizing any person to offer or sell these securities in California.

8 59. The securities offerings in Trycera were not exempt from the qualification  
9 requirement of the CSL.

10 **4. The Fraud**

11 **a. Smith's Undisclosed Bankruptcies**

12 60. The solicitation materials for the Trycera securities offerings contained positive  
13 biographies of Smith but failed to disclose that Smith had filed for bankruptcy on three occasions.

14 61. For example, a private placement memorandum describes Smith in a positive light  
15 by stating, "Smith has owned and operated his own business since the age of 24."

16 62. But the private placement memorandum and other solicitation materials failed to  
17 disclose that Smith had filed for bankruptcy three times, in March 1998, January 2004, and March  
18 2004.

19 63. This information was material and its omission made the descriptions of Smith's  
20 supposedly successful financial and business background misleading.

21 **b. Undisclosed Desist and Refrain Orders**

22 64. The solicitation materials discussed Trycera's and Smith's successes and  
23 compliance with the law but failed to disclose the Commissioner's 2008 Desist and Refrain Order  
24 issued against Smith and 2016 Desist and Refrain Order issued against Trycera and Smith.

25 65. This information was material and omitting such information made the descriptions  
26 of Trycera's and Smith's successes and legal compliance misleading.

27 **c. Trycera's and Smith's Undisclosed Judgments, Debts, and Liens**

28 66. The solicitation materials discussed Trycera's and Smith's successes and legal

1 compliance but failed to disclose legal judgments, debts for unpaid wages, and liens against  
2 Trycera and Smith.

3 67. On November 22, 2011, The Irvine Company LLC sued Trycera in Orange County  
4 Superior Court in an unlawful detainer action. On January 9, 2012, The Irvine Company obtained  
5 a default judgment against Trycera in the amount of \$26,133.01.

6 68. On August 27, 2012, the Labor Commissioner of the State of California issued an  
7 Order, Decision, or Award of the Labor Commissioner, finding that Trycera owed Michael  
8 Nathans unpaid wages and other amounts. On October 1, 2012, the Orange County Superior Court  
9 entered judgment in favor of Nathans against Trycera in the amount of \$183,958.88. As of  
10 December 31, 2019, Trycera still owed Nathans money on the judgment.

11 69. On August 27, 2012, the Labor Commissioner of the State of California issued an  
12 Order, Decision, or Award of the Labor Commissioner, finding that Trycera owed Kevin  
13 Goldstein unpaid wages and other amounts. On October 1, 2012, the Orange County Superior  
14 Court entered judgment in favor of Goldstein against Trycera in the amount of \$122,535.36. In or  
15 about March 2016, Goldstein filed a lien against Trycera in the amount of \$154,011.45. As of  
16 December 31, 2019, Trycera still owed Goldstein money on the judgment.

17 70. On October 1, 2012, The Balancing Act TV, LLC, sued Trycera in Florida,  
18 Broward County Circuit Court for breach of contract, alleging that Trycera failed to pay the  
19 plaintiff under two contracts. On January 16, 2013, The Balancing Act TV obtained a default  
20 judgment against Trycera in the amount of \$139,586.00.

21 71. On April 2, 2013, the State of Maryland, Department of Labor, Licensing, and  
22 Regulation, Office of Unemployment Insurance assessed a tax lien against Trycera in the amount  
23 of \$1,306.31. That tax lien remained unsatisfied and the amount owed increased to \$2,713.98  
24 when the State of Maryland assessed another tax lien against Trycera on June 26, 2014.

25 72. On December 26, 2013, the State of California, Employment Development  
26 Department assessed a tax lien against Trycera in the amount of \$1,615.00. The lien was not  
27 released until January 20, 2016.

28 73. On March 26, 2014, the State of California, Employment Development Department

1 assessed a tax lien against Trycera in the amount of \$1,496.00. The lien was not released until  
2 December 21, 2015.

3 74. On March 23, 2018, several plaintiffs, including Alan Knitowski, Hang Dang, Curo  
4 Capital, LLC, Sagoso Capital, LLC, and Cane Capital, LLC, sued Trycera in Orange County  
5 Superior Court for breach of contract, alleging that Trycera failed to make monthly payments  
6 under a debt settlement agreement between Trycera and the plaintiff-creditors. On October 19,  
7 2020, judgment was entered against Trycera in the amount of \$149,347.50. On February 17, 2021,  
8 a writ of execution was issued in the amount of \$153,804.70.

9 75. On June 29, 2018, CDS Office Products, Inc., doing business as CDS Office  
10 Furniture, sued Trycera in Orange County Superior Court, Small Claims Court, for failing to pay  
11 for office furniture. On September 6, 2018, a judgment was entered against Trycera in the amount  
12 of \$3,796.20.

13 76. On April 3, 2019, the Labor Commissioner of the State of California issued an  
14 Order, Decision, or Award of the Labor Commissioner, finding that Trycera owed Brandon Deary  
15 unpaid wages and other amounts. On July 13, 2021, the Orange County Superior Court entered  
16 judgment in favor of Goldstein against Trycera in the amount of \$39,958.08.

17 77. On September 10, 2019, the State of California, Employment Development  
18 Department assessed a tax lien against Trycera in the amount of \$2,588.00. The lien was not  
19 released until April 2, 2020.

20 78. On December 6, 2019, Unity Communications, LLC, sued Trycera in Orange  
21 County Superior Court for breach of contract, among other claims, alleging that Trycera failed to  
22 pay for services rendered. On July 13, 2020, Unity Communications obtained a default judgment  
23 against Trycera in the amount of \$13,250.65. On February 18, 2021, a writ of execution was filed  
24 in the amount of \$13,997.61.

25 79. On December 6, 2019, the State of California, Employment Development  
26 Department assessed a tax lien against Trycera in the amount of \$2,707.00. The lien was not  
27 released until April 2, 2020.

28 80. Information regarding legal judgments, debts for unpaid wages, and liens against

1 Trycera and Smith was material, and omitting such information made the descriptions of Trycera’s  
2 and Smith’s successes and legal compliance misleading.

3 **d. Trycera and Smith Misled and Deceived Investors Regarding Trycera’s**  
4 **Profitability and Financial Viability**

5 81. The solicitation materials for the Kiosk Sponsorships falsely represented that  
6 Trycera was financially viable and failed to disclose Trycera’s history of unprofitability.

7 82. For example, the Kiosk Purchase and Sale Agreement stated that there were no  
8 material liabilities affecting Trycera’s ability to operate the live agent kiosks or perform on the  
9 Kiosk Sponsorships.

10 83. Moreover, Trycera failed to disclose that it had a history of unprofitability. For  
11 example, from 2015 to at least 2019, Trycera’s losses exceeded \$1 million annually.

12 84. Also, as early as 2017, Trycera and Smith were unable to make the promised  
13 monthly payments to investors. For example, in August 2017, Trycera delayed payments to one  
14 investor because of problems with the Kiosk Sponsorship, and a monthly payment check to  
15 another investor bounced when the investor tried to deposit the check.

16 85. Information about Trycera’s financial viability was a material fact, and Trycera’s  
17 and Smith’s representations of such financial viability were false and misleading in light of  
18 Trycera’s ongoing unprofitability and financial losses.

19 **e. Trycera and Smith Misled and Deceived Investors Regarding the**  
20 **Placement of Live Agent Kiosks**

21 86. In the Kiosk Sponsorship offering, Trycera, Smith, and their agents made  
22 misrepresentations about the locations where live agent kiosks would be placed.

23 87. For example, some Kiosk Purchase and Sale Agreements represented that Trycera  
24 was placing up to 2,500 kiosks from 2017 to 2019.

25 88. Other Kiosk Purchase and Sale Agreements, used from 2017 to 2020, stated that  
26 Trycera was placing live agent kiosks at strategic locations like military bases, auto dealerships,  
27 and mortgage companies.

28 89. In a YouTube video shared with investors and prospective investors, Smith said

1 that Trycera was currently working in Fort Campbell, Kentucky; Camp Pendleton, California; and  
2 Nellis Air Force Base, Nevada.

3 90. In fact, Trycera placed no more than 10 kiosks from 2017 to 2019.

4 91. None of these kiosks were placed on military bases or at mortgage companies.

5 92. Information about the placement of live agent kiosks was a material fact, and  
6 Trycera’s and Smith’s representations about kiosk placement were false and misleading in light of  
7 the actual volume and location of live agent kiosk placements.

8 **f. Trycera and Smith Misled and Deceived Investors Regarding the**  
9 **Volume of Sales Generated at Live Agent Kiosks**

10 93. Trycera and Smith misrepresented that live agent kiosks would generate a  
11 minimum of 20 customers per month and used this 20-customer projection as a basis for  
12 calculating a monthly return of approximately \$1,500.00 to investors in the Kiosk Sponsorships.

13 94. For example, in a YouTube video shared with investors and prospective investors,  
14 Smith represented that “we know that each unit will generate a minimum of 20 customers a  
15 month.”

16 95. In another YouTube video, Smith stated that each live agent kiosk would generate  
17 “approximately 40 customers a month.”

18 96. In fact, in 2017, the single kiosk that was placed generated less than 10 customers;  
19 in 2018, the single kiosk that was placed generated no customers; and in 2020, the three kiosks  
20 that were placed generated less than 20 customers.

21 97. Information about the volume of credit repair sales generated at live agent kiosks  
22 was a material fact, and Trycera’s and Smith’s representations about the sales volume was false or  
23 misleading in light of the actual volume of sales generated.

24 **g. Trycera and Smith Misled and Deceived Investors that Returns on a**  
25 **Kiosk Sponsorship Were “Guaranteed”**

26 98. From 2017 to December 2020, Trycera, Smith, and their agents represented to  
27 prospective investors that monthly payments under the Kiosk Sponsorships were “guaranteed.”  
28 Trycera and Smith, however, had no basis for this guarantee, given Trycera’s history of

1 unprofitability, its failure to make such guaranteed payments, the small number of live agent  
2 kiosks that had been placed, and the low volume of credit repair services sold to customers  
3 through live agent kiosks.

4 99. Kiosk Purchase and Sale Agreements represented that Trycera “guarantees”  
5 monthly payments to investors.

6 100. Also, some solicitation materials stated that each Kiosk Sponsorship was ready to  
7 provide up to a 25% rate of return to investors and other solicitation materials represented a 38%  
8 rate of return.

9 101. However, as early as 2017, Trycera and Smith were unable to make the promised  
10 monthly payments to investors.

11 102. The representations that monthly payments under Kiosk Sponsorships were  
12 guaranteed was a material fact, and Trycera’s and Smith’s representations of such guaranteed  
13 payments were false and misleading because they had no basis for making such representations.

14 **h. Trycera and Smith Misled and Deceived Investors About Being**  
15 **Assigned a Specific Live Agent Kiosk**

16 103. Beginning in February 2017 and continuing through July 2019, Trycera, Smith, and  
17 their agents represented that each investor would be assigned a specific live agent kiosk that would  
18 generate revenue to make monthly payments to the investor. However, Trycera and Smith over-  
19 sold Kiosk Sponsorships compared to the number of live agent kiosks actually placed, making it  
20 impossible for each investor to be assigned to a specific live agent kiosk.

21 104. From February 1, 2017, to July 31, 2019, Trycera and Smith sold at least 61 Kiosk  
22 Sponsorships but did not place a sufficient number of live agent kiosks to ensure that each investor  
23 was assigned a specific live agent kiosk to generate monthly payments.

24 105. In 2017, Trycera and Smith claim that they placed the first live agent kiosk and  
25 sold four Kiosk Sponsorships.

26 106. In 2018, Trycera and Smith assert that they placed one live agent kiosk and sold an  
27 additional Kiosk Sponsorship.

28 107. In 2019, Trycera and Smith claim they placed seven live agent kiosks and, by July

1 2019, sold 56 additional Kiosk Sponsorships.

2 108. That investors would be assigned a specific live agent kiosk was a material fact,  
3 and Trycera’s and Smith’s representations about it were false or misleading given the insufficient  
4 number of live agent kiosks placed.

5 **i. Trycera and Smith Misled and Deceived Investors Regarding**  
6 **Compensation to Salespeople**

7 109. The Kiosk Purchase and Sale Agreements falsely represented that no commissions  
8 would be paid to salespeople who offered Kiosks Sponsorships to prospective investors.

9 110. For example, the Kiosk Purchase and Sale Agreements state that “[n]either  
10 [Trycera] nor any of its affiliates has retained any person to whom any brokerage commission,  
11 finder’s fee or other like payment is or will be due in connection with [Kiosk Sponsorships].”

12 111. Contrary to this representation, Trycera and Smith paid approximately \$150,000.00  
13 in commissions to a team of salespeople offering the Kiosk Sponsorship to prospective investors.

14 112. Whether commissions would be paid to salespeople was a material fact, and  
15 Trycera and Smith’s representations that no such commissions would be paid were false or  
16 misleading because they did pay commissions to salespeople.

17 **j. Trycera and Smith Misled and Deceived Investors About the Source of**  
18 **Money Used to Make Monthly Investor Payments**

19 113. Trycera and Smith misled and deceived investors by representing that monthly  
20 payments from a Kiosk Sponsorship would result from the revenue generated by a live agent  
21 kiosk.

22 114. In a YouTube video, Smith stated that “the kiosks will generate approximately 40  
23 customers a month . . . and we pay \$50 commission per customer that the kiosk generates. So it’s a  
24 revenue stream for that investor.”

25 115. In fact, in some instances, Trycera and Smith used money from newer investors to  
26 make monthly payments to previous investors.

27 116. For example, money from an investor who purchased Trycera stock was used to  
28 make a monthly payment to a previous investor in the Kiosk Sponsorship.

1 117. Trycera and Smith’s use of new investor money to pay previous investors is  
2 characteristic of a Ponzi scheme.

3 118. The source of money used to make monthly investor payments from a Kiosk  
4 Sponsorship was a material fact, and Trycera and Smith’s representation that such payments  
5 would result from revenue generated by a live agent kiosk was false and misleading because they  
6 used new investor money to pay earlier investors.

7 119. Smith was responsible for approving Trycera’s solicitation materials related to the  
8 securities offerings, including private placement memoranda, website content, and YouTube  
9 videos, which were distributed to current and prospective investors.

10 120. The Trycera solicitation materials were created and used for the purpose of  
11 soliciting investors.

12 **V.**

13 **First Cause of Action**

14 **OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES**  
15 **IN VIOLATION OF CORPORATIONS CODE SECTION 25110**  
16 **(Against All Defendants)**

17 121. The Commissioner incorporates by reference paragraphs 1 through 120 of this  
18 Complaint as though fully set forth herein.

19 122. CSL section 25110 provides, in pertinent part:

20 It is unlawful for any person to offer or sell in this state any security  
21 in an issuer transaction . . . unless such sale has been qualified . . . or  
22 unless such security or transaction is exempted or not subject to  
23 qualification under Chapter 1 [commencing with CSL section  
24 25100] of this part.

25 123. From at least October 2009 to at least August 2021, Trycera, Smith, and their  
26 agents offered and sold investments to at least 74 investors in 94 separate transactions, raising at  
27 least \$10,766,381.00.

28 124. The investments offered and sold by Trycera, Smith, and their agents were  
“securities” within the meaning of CSL section 25019. The securities included stock, promissory  
notes convertible to stock, warrants, and investment contracts.





1 facts to some or all of the investors, including but not necessarily limited to the following  
2 misrepresentations and omissions:

- 3 a. omitting to disclose Smith’s three prior bankruptcies;
- 4 b. omitting to disclose the 2008 Desist and Refrain Order issued against Smith  
5 and the 2016 Desist and Refrain Order issued against Trycera and Smith;
- 6 c. omitting to disclose legal judgments, debts for unpaid wages, and liens  
7 against Trycera;
- 8 d. misrepresenting that Trycera was solvent and had no material liabilities  
9 affecting its operations;
- 10 e. misrepresenting the number of live agent kiosks and the locations where  
11 kiosks were placed;
- 12 f. misrepresenting the volume of credit repair sales generated at live agent  
13 kiosks;
- 14 g. misrepresenting that returns on Kiosk Sponsorships were guaranteed;
- 15 h. misrepresenting that each investor would be assigned a live agent kiosk  
16 from which monthly payments would be generated;
- 17 i. misrepresenting that commissions would not be paid to salespeople; and
- 18 j. misrepresenting the source of money used to make monthly payments to  
19 investors.

20 133. The misrepresentations and omissions referred to herein were of “material fact[s]”  
21 within the meaning of CSL section 25401, since they concerned matters that a reasonable investor  
22 would consider important in deciding whether to invest.

23 134. The misrepresentations and omissions of material facts took place “within the  
24 state” of California within the meaning of CSL section 25008.

25 135. Unless enjoined by this Court, Trycera, Smith, and their agents will continue to  
26 violate CSL section 25401.

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**VII.**

4

**Third Cause of Action**

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**VIOLATION OF PRIOR DESIST AND REFRAIN ORDERS**

6

**ISSUED BY THE COMMISSIONER**

7

**(Against All Defendants)**

8

136. The Commissioner incorporates by reference paragraphs 1 through 120 of this

9

Complaint as though fully set forth herein.

10

137. CSL section 25532 provides, in pertinent part, as follows:

11

(a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law . . . .

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13

14

. . .

15

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

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17

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

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138. Smith violated the 2008 Desist and Refrain Order by offering and selling

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unqualified, nonexempt securities to at least 74 investors in 94 separate transactions.

22

139. Trycera and Smith violated the 2016 Desist and Refrain order by offering and

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selling securities by means of misrepresentations and omissions of material facts to at least 55

24

investors in 69 separate transactions.

25

140. Unless enjoined, Trycera, Smith, and their agents will continue to violate the 2008

26

Desist and Refrain Order and 2016 Desist and Refrain Order.

27

**VIII.**

28

**Prayer for Relief**

1           WHEREFORE, the Commissioner prays for a judgment against Defendants Trycera  
2 Financial, Inc., Raymond Allen Smith, and Does 1 through 10, inclusive, as follows:

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

4           For an Order of Preliminary Injunction and, ultimately, a Permanent Injunction, pursuant  
5 to Corporations Code section 25530, subdivision (a), restraining and enjoining Trycera Financial,  
6 Inc., Raymond Allen Smith, and Does 1 through 10, inclusive, from directly or indirectly:

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

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

17          3.       violating the 2008 Desist and Refrain Order and 2016 Desist and Refrain Order  
18 issued by the Commissioner; and

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

24           **B. Rescission and Restitution**

25           For a Final Judgment requiring Trycera Financial, Inc., Raymond Allen Smith, and Does 1  
26 through 10, inclusive, to rescind each and all of the unlawful transactions alleged in this  
27 Complaint, pursuant to Corporations Code section 25530, subdivision (b), as shall be determined  
28 by this Court to have occurred, and further requiring Trycera Financial, Inc., Raymond Allen

1 Smith, and Does 1 through 10, inclusive, to pay full restitution to each person determined to have  
2 been subject to acts, practices, or transactions which constitute violations of the Corporate  
3 Securities Law of 1968, in an amount of at least \$10,766,381.00, or according to proof, to at least  
4 74 investors. In addition, that Trycera Financial, Inc., Raymond Allen Smith, and Does 1 through  
5 10, inclusive, pay the legal rate of interest on the principal amount invested by each and every  
6 investor-victim from the date of their investment to the date of judgment herein.

7 **C. Civil Penalties**

8 For a Final Judgment requiring Trycera Financial, Inc., Raymond Allen Smith, and Does 1  
9 through 10, inclusive, to pay the Department of Financial Protection and Innovation \$25,000.00 as  
10 a civil penalty for each act in violation of the Corporate Securities Law of 1968 and the 2016  
11 Desist and Refrain Order, pursuant to Corporations Code section 25535, in an amount of at least  
12 \$29,800,000.00, or according to proof.

13 Additionally, for a Final Judgement requiring Raymond Allen Smith to pay the  
14 Department of Financial Protection and Innovation \$25,000.00 as a civil penalty for each act in  
15 violation of the 2008 Desist and Refrain Order, pursuant to Corporations Code section 25535, in  
16 an amount of at least \$1,575,000.00, or according to proof.

17 **D. Prohibition on Acting as Officer or Director**

18 For a Final Judgment permanently prohibiting Raymond Allen Smith pursuant to  
19 Corporations Code section 25530.1 from acting as an officer or director of any issuer that has  
20 securities qualified pursuant to section 25110 or that has securities or a transaction exempt from  
21 qualification pursuant to sections 25100, 25102, or 25103.

22 **E. Other Relief**

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

24 Dated: January 18, 2022

CLOTHILDE V. HEWLETT  
Commissioner  
Department of Financial Protection and Innovation

26  
27 By: \_\_\_\_\_  
ALEXANDER M. CALERO  
Senior Counsel  
Attorney for the People of California