

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHELA CAMENISCH, et al.,  
Plaintiffs,  
v.  
UMPQUA BANK,  
Defendant.

Case No. [20-cv-05905-RS](#)

**ORDER DENYING MOTION TO  
DISMISS**

Plaintiffs in this putative class action are victims of an alleged Ponzi scheme carried out by Ken Casey through two companies he founded and controlled—Professional Financial Investors, Inc. (“PFI”) and Professional Investors Security Fund, Inc. (“PISF”). Casey is deceased, and PFI and PISF are in bankruptcy. Plaintiffs therefore seek to recover damages from Umpqua Bank, the financial institution that handled all of the accounts of PFI and PISF. Umpqua moves to dismiss the complaint, contending plaintiffs have not alleged sufficient facts to show it had actual knowledge of the Ponzi scheme, that it provided “substantial assistance” to Casey and his companies in the wrongdoing, or that it had knowledge that Casey and the companies were breaching fiduciary duties to plaintiffs. The motion will be denied.

*1. Factual allegations*

Casey founded PISF in 1983 and served as its sole shareholder, officer, and director until his death last May. He founded PFI in 1990 and was its sole officer, director, and shareholder until

1 1998, when he relinquished his corporate positions and placed his shares in an irrevocable trust for  
2 his ex-wife, Charlene Albanese. Casey, however, continued to exercise de facto control over PFI  
3 until his death.

4 Casey previously was an accountant. He lost his license in 1997 after he was convicted of  
5 21 counts of bank fraud, five counts of tax evasion, five counts of filing false income tax returns,  
6 and one count of conspiracy to defraud the United States. He was sentenced to 18 months in  
7 prison. Despite those events, Casey built a reputation as a prominent businessman, adventurer, and  
8 philanthropist. At the time of his death, PFI and PISF owned interests in about 70 real properties  
9 worth more than \$550 million and Casey was reputed to be the largest commercial property owner  
10 in Marin County.

11 The victims of Casey's alleged scheme invested in PFI and PISF's real property through  
12 various mechanisms, including loans secured by junior deeds of trust in the properties, loans  
13 secured by PISF's interest in limited partnerships that owned the properties, and by purchasing  
14 memberships in LLCs that owned the properties. Investors were promised steady returns at above-  
15 market rates in exchange for their contributions and were told that those returns would be paid  
16 from the real property's rental income and capital appreciation. In fact, existing investors were  
17 paid in large part through new investors' contributions—the hallmark of a Ponzi scheme.

18 Upon Casey's death, Ms. Albanese hired an attorney at a small Marin County law firm to  
19 help transition ownership of the business. At the very outset of the attorney's review of PFI and  
20 PISF's finances, it was apparent Casey's businesses lacked sufficient cash flow to meet their  
21 monthly obligations and had been unlawfully diverting new investors' money to pay previous  
22 investors. Payments to investors were stopped and Ms. Albanese directed the companies to alert  
23 governmental authorities, including the Securities Exchange Commission, about Casey's criminal  
24 activity. Investors were informed of both developments in June of last year, approximately a  
25 month after Casey's death.

26 PISF was subsequently forced into involuntary bankruptcy by some of its investors. A  
27 professional accountant and manager was hired to serve as the Chief Restructuring Officer for  
28

1 PFI—which then voluntarily commenced bankruptcy proceedings of its own.

2 After commissioning valuations from a real estate brokerage, the Chief Restructuring  
3 Officer has reported that PFI and PISF’s real estate holdings are worth approximately \$555  
4 million; the outstanding debt on those properties, including debt owed to commercial lenders and  
5 one group of investors, is believed to total more than \$400 million; and PISF appears to owe more  
6 than \$250 million to other investors. Thus, it appears that even after all efforts are made to return  
7 as much value as possible to investors, their losses likely will exceed \$100 million.

8 Plaintiffs explicitly allege that “[i]n the course of performing its customer due diligence  
9 obligations, Umpqua learned that Casey was operating a Ponzi scheme, using deposits from new  
10 investors to pay existing investors, and using investor deposits to pay Casey’s personal expenses.”  
11 The factual allegations plaintiffs offer to support the plausibility of that assertion include the  
12 following:

13 a. Umpqua is required by law to conduct extensive customer due diligence, especially for  
14 high-risk and high-net worth customers like Casey. These “know your customer” obligations are  
15 ongoing and required Umpqua to familiarize itself with Casey, the nature of PFI and PISF’s  
16 operations, the source and legitimacy of their funds, and the purpose of their bank accounts and  
17 ongoing financial transactions. Umpqua was also required to monitor PFI and PISF’s accounts for  
18 “red flags” indicative of potential fraud and to report suspicious activity to governmental  
19 authorities.

20 b. All of PFI and PISF’s bank accounts were Umpqua accounts, giving Umpqua a full view  
21 of the companies’ financials.

22 c. Casey’s companies were among Umpqua’s largest clients in this region, having raised  
23 hundreds of millions of dollars from investors, making their activities highly visible to Umpqua.

24 d. Casey was a convicted felon who had pled guilty to numerous counts of financial fraud,  
25 which drew further scrutiny to his financial enterprise.

26 e. Casey kept close control over PFI and PISF’s bank accounts—a highly  
27 unusual arrangement for such a large investment business, which would normally have many  
28

1 account signatories.

2 f. PFI and PISF did not use outside accounting firms to manage or audit its finances and  
3 never provided Umpqua with independent audit reports.

4 g. PFI and PISF did not provide Umpqua with copies of any SEC filings and had not  
5 registered its investment offerings with the SEC or filed for an exemption.

6 h. PFI and PISF were not filing the appropriate forms to perfect investors' security  
7 interests and were not providing Umpqua with copies of those forms.

8 i. PFI and PISF's bank accounts showed that the companies required a regular influx of  
9 new investor money to meet the companies' monthly obligations.

10 j. PFI and PISF's bank accounts showed that money deposited from new investors were  
11 being commingled with other investors' funds, were being used to pay existing investors, and  
12 were being used to pay Casey's personal expenses.

13 k. Casey's Ponzi scheme was so obvious to someone with access to PFI and PISF's bank  
14 accounts that it was discovered almost immediately after his death. Payments to existing investors  
15 had to be suspended within a month and the companies were forced into bankruptcy.

16 l. Within the past ten years, Umpqua has twice agreed to pay restitution to victims of  
17 Oregon-based Ponzi schemes after it was accused of aiding and abetting the chief perpetrators of  
18 those schemes.

19

20 *2. Pleading standard*

21 Umpqua argues at length that plaintiffs must state their allegations with heightened  
22 particularity for a number of reasons, including the requirements of Rule 9 of the Federal Rules of  
23 Civil Procedure applicable to fraud claims. The disputed issue here, however, is the element of  
24 plaintiffs' claims that will require them to prove Umpqua had actual knowledge of Casey's fraud.  
25 Even to the extent Rule 9 otherwise applies, it provides "knowledge . . . may be alleged  
26 generally."

27 That said, under ordinary pleading standards, plaintiffs must still plead sufficient facts  
28

1 to state a claim that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing  
 2 *Bell Atl. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). A claim is facially plausible “when the  
 3 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
 4 defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). This  
 5 standard asks for “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* The  
 6 determination is a context-specific task requiring the court “to draw on its judicial experience and  
 7 common sense.” *Id.* at 679.

### 8 9 3. Actual knowledge

10 Umpqua’s moving papers focus on arguing that the complaint at most alleges that it *should*  
 11 *have known* of the underlying fraud, but that such constructive knowledge is insufficient to  
 12 support the aiding and abetting claims advanced by plaintiffs. Indeed, the complaint includes  
 13 allegations that present circumstantial, rather than direct, evidence relating to Umpqua’s  
 14 knowledge and that therefore could be seen as primarily supporting constructive knowledge.  
 15 Plaintiffs, however, have explicitly alleged *actual* knowledge, and have presumably done so with  
 16 full recognition of their obligations under Rule 11. Additionally, as noted, knowledge may be  
 17 alleged generally.

18 The question therefore becomes only whether plaintiffs have alleged sufficient supporting  
 19 facts to render the assertion that Umpqua acted with actual knowledge plausible. *See*  
 20 *Chang v. Wells Fargo Bank, N.A.*, 2020 WL 1694360, at \*5 (N.D. Cal. Apr. 7, 2020) (reviewing  
 21 caselaw and distinguishing between instances where plaintiffs assert actual knowledge and those  
 22 where they do not); *see also In re Woodbridge Investments Litig.*, 2020 WL 4529739, at \*5-6  
 23 (C.D. Cal. Aug. 5, 2020) (drawing the same distinction).<sup>1</sup> Although the question may be somewhat  
 24 close in light of the substantive requirements of California law for proving an aiding and abetting

25  
 26 \_\_\_\_\_  
 27 <sup>1</sup> Umpqua criticizes *Chang* and *Woodbridge* as supposedly loosening the pleading standards for  
 28 cases such as these. Both cases, however, fully ground their analyses in existing law.

1 claim,<sup>2</sup> the allegations give sufficient plausibility to plaintiffs' assertion that Umpqua had actual  
 2 knowledge of Casey's fraud to survive a motion to dismiss. Even if plaintiffs have failed to show  
 3 that Umpqua was privy to all of the information they present as relevant, or that each and every of  
 4 the factors identified in *Chang* and *Woodbridge* are present here, taken as a whole the complaint  
 5 satisfies the plausibility standard.

6  
 7 4. *Substantial assistance*

8 Umpqua's contention that the complaint does not adequately allege that it "substantially  
 9 assisted" in carrying out the fraud falls with its argument about actual knowledge. "Under  
 10 California law, once Plaintiffs have pled knowledge, even 'ordinary business transactions' a bank  
 11 performs for a customer can satisfy the substantial assistance element of an aiding and abetting  
 12 claim if the bank actually knew those transactions were assisting the customer in committing a  
 13 specific tort." *Chang*, 2020 WL 1694360, at \*6. As in *Chang*, plaintiffs adequately specify the  
 14 banking activity they contend facilitated the operation of the scheme.

15  
 16 5. *Fiduciary duty*

17 Finally, the claim for aiding and abetting breach of fiduciary duty likewise is sufficiently  
 18 pleaded, given the adequacy of the allegations of Umpqua's actual knowledge of the scheme. *See*  
 19 *Chang*, 2020 WL 1694360, at \*7.

20  
 21 Accordingly, the motion to dismiss is denied. Umpqua shall file an answer within 20 days  
 22 of the date of this order.

23  
 24  
 25 \_\_\_\_\_  
 26 <sup>2</sup> "While in federal court the familiar *Twombly/Iqbal* standard controls, the California courts'  
 27 recognition of the need to carefully vet this type of claim is illuminating as this Court does its best  
 28 to predict how the California Supreme Court would assess Plaintiffs' state law aiding and abetting  
 claims." *Chang*, 2020 WL 1694360, at \*3.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED.**

Dated: January 28, 2021



RICHARD SEEBORG  
United States District Judge

United States District Court  
Northern District of California