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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: W. Simmons, Deputy

1 Michael L. Schrag (SBN 185832)
2 Linda Lam (SBN 301461)
3 **GIBBS LAW GROUP LLP**
4 505 14th Street, Suite 1110
5 Oakland, California 94612
6 Telephone: (510) 350-9700
7 Facsimile: (510) 350-9701
8 mls@classlawgroup.com
9 lpl@classlawgroup.com

6 Scott L. Silver
7 **SILVER LAW GROUP**
8 11780 W. Sample Road
9 Coral Springs, Florida 33065
10 Telephone: (954) 755-4799
11 Facsimile: (954) 755-4684
12 ssilver@silverlaw.com

11 *Counsel for Plaintiff and Proposed Class*

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR MARIN COUNTY**

14 Susan Aiken, individually and on behalf of all
15 others similarly situated.

16 Plaintiff,

17 v.

18 Professional Financial Investors, Inc., a
19 California corporation; Professional Investors
20 Security Fund Inc., a California corporation;
21 Lewis Wallach; and Charlene Albanese,
22 personal representative of the Estate of
23 Kenneth J. Casey, deceased,

24 Defendants.

Case No. *CV* **200 1560**

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. Professional Financial Investors, Inc. (PFI) is a California-based real estate firm that
3 raised millions of dollars from small or retail investors for purported real estate deals. Professional
4 Investors Security Fund, Inc. (PISF) is PFI’s primary fund, used to borrow or raise money from
5 investors. Founded in the early 1980’s, PFI created a web of legal entities that lured individuals to
6 invest in apartment and commercial buildings in and around Marin County. PFI generally promised
7 investors distributions that would come from rental income and, for some investors, profits from the
8 eventual sale of the properties. By PFI’s own admission, the SEC is currently investigating PFI, all of
9 its officers have resigned, a Chief Restructuring Officer has been hired, interest payments to investors
10 have been halted, and a cloud of questionable conduct hangs over the company.

11 2. PFI and PISF raised hundreds of millions of dollars from investors over the years,
12 creating at least four categories of investors including: (1) members of various limited liability
13 companies; (2) lenders, secured by deeds of trusts on properties held by various limited partnerships;
14 (3) lenders, secured by deeds of trust on various properties owned solely by PFI; and (4) lenders to
15 PISF, who were provided collateral in the form of the interests held by PISF in various limited
16 partnerships. This class action seeks relief for all of these investors.

17 3. The investors were sold contracts in violation of California and federal securities laws.
18 Although some of the investments were characterized as contracts or notes, these investments are
19 securities and must be registered with the SEC and/or the state of California or qualify for an
20 exemption. An investment contract exists if there is: (a) an investment of money, (b) in a common
21 enterprise, (c) with the expectation of profits derived solely from the efforts of others. Traditionally,
22 many private real estate deals qualify for an exemption under 17 C.F.R. §230.506, titled “Exemption
23 for limited offers and sales without regard to dollar amount of offering.” However, in the instant matter,
24 Defendants did not apply for, nor would they qualify for, an exemption from the SEC or California
25 registration requirements.

26 4. PFI borrowed or raised money from investors in several different but substantially
27 similar methods, promising Plaintiff and class members that money would be repaid through the
28 successful operation, maintenance, and liquidation of real estate owned or controlled by Defendants. At

1 times, PFI promised investors equity in specific properties it owned directly or as the managing partner
2 of an LLC. Or, many investors were sold an investment vehicle called a “Contract for Collateral
3 Related to Straight Note” (“Contract”) which allowed investors to participate in PFI’s real estate
4 projects without participating in any specific deal. The borrower on the Contract was PISF, and the
5 Contract allowed investors to share in profits from the rental and ultimate sale of the properties
6 managed and owned by Defendants.

7 5. This action is brought on behalf of all investors who were lenders to PFI, PISF, or a
8 related entity, or who invested in an LLC managed or organized by PFI, PISF, or a related entity and
9 were promised that their investments were collateralized by real estate in the name of PFI, PISF, or in
10 an entity in which PFI had an equity interest.

11 6. Investors were assured that investments were collateralized by various properties.
12 However, PFI’s records often fail to match Marin County records. The Marin County records
13 frequently reflect PFI as the sole owner of the properties which PFI claimed was in the name of other
14 LLCs. Marin County records combined with other information also reveals that Defendants comingled
15 the assets and financials of PFI and PISF -- leaving Plaintiff incapable of knowing whether collateral
16 exists to fully repay her loan or what specific rights she has to any specific collateral.

17 7. The president and principal of PFI and PISF was Ken Casey, an accountant by
18 profession who pled guilty tax fraud before forming PFI. Casey passed away in May 2020, opening a
19 Pandora’s box relating to his business empire. PFI and PISF subsequently hired a Marin County law
20 firm to assist “with the transition of ownership of the two companies.” The law firm reportedly
21 commenced an audit of PFI-PISF, and wrote an initial letter to investors on June 4, 2020 stating, in
22 part, “it became apparent that there existed legitimate questions involving the structure and investment
23 history of Mr. Casey’s companies.” The law firm reported that it approached the SEC and asked the
24 SEC to conduct a fact-finding inquiry into Casey and his companies’ real estate investments. The SEC
25 investigation is reportedly ongoing.

26 8. Lewis Wallach was Casey’s business partner and held various high-level positions at
27 PFI and/or PISF, including as CEO of PFI until June 25, 2020.

1 business partners who jointly operated the corporate Defendants. Wallach’s wife, Leslie Wallach, was
2 PFI’s chief financial officer. In 2018, the Wallachs purchased Judy Garland’s former beach house in
3 Malibu for \$3.545 million, demonstrating their alleged success in real estate investing.

4 25. Investors were told that their investments and loans would be used to purchase a
5 commercial or residential building. The investors who purchased loan contracts would receive high
6 interest rate payments each month, until the principal is paid back to her by a date certain. LLC
7 investors purchased equity positions in special purpose entities used to buy commercial and residential
8 real estate.

9 26. Over the past few decades, PFI-PISF has lured over 1,000 investors into contributing
10 capital to its enterprises. While some or most investors were receiving their promised cash
11 distributions, distributions to investors stopped after Casey’s death in May 2020.

12 **B. PFI-PISF Investments Were Required to Be Registered**

13 27. The investments PFI and PISF sold constitute “securities” that cannot be offered or sold
14 without registration under federal and state blue sky laws.

15 28. California Corp. Code § 25110 prohibits the offer or sale by any person in California of
16 securities that are not qualified through registration. California Corp. Code § 25503 affords a statutory
17 cause of action to victimized investors for violations of Section 25110. California Corp. Code §
18 25504.1 also extends liability under Section 25503 to any person who materially assists in a violation of
19 Section 25110 with an intent to deceive or defraud, and states that such person is jointly and severally
20 liable with any other person liable under Section 25503.

21 29. California law also required PFI-PISF investments to be registered as securities or
22 qualify for an exemption. Their contracts, notes, and other investment vehicles were not exempt from
23 registration under Rule 506 and, at no time did PFI or PFIS seek to avail itself of any exemption under
24 the securities laws.

25 **C. Plaintiff’s Individual Experience**

26 30. This case involves a California-based company raising money primarily from California
27 residents and investing primarily in California real estate. Marin County is the epicenter of this case.

1 31. Plaintiff Susan Aiken learned of PFI-PISF through her financial advisor, who received a
2 referral fee from PFI-PSIF.

3 32. In April 2004, Aiken made an initial investment of \$160,000 in Professional Investors
4 Security Fund XIV. Aiken was one of several lenders who received a promissory note secured by a
5 Deed of Trust on an apartment building in Novato, CA. The borrower was Professional Investors
6 Security Fund XIV and the note was signed by Wallach on behalf of this entity. PFI is the trustee on the
7 Deed of Trust.

8 33. Aiken was supposed to receive an interest rate of 10.5% (payable monthly) for four
9 years and five months, at which point she would receive a return of her principal. Aiken was told that
10 she would share ownership in apartments with other investors in Professional Investors Security Fund
11 XIV, as well as PFI itself. Aiken, however, did not receive the return of her principal.

12 34. Instead, in June 2015, Aiken received a straight note, also described as a Collateralized
13 Note Investment, stating that she would be paid an interest rate of 10% each month on her \$160,000
14 investment, with the principal due on June 15, 2020. The Contract for Collateral Related to Straight
15 Note lists PISF as the borrower and lists ten different Professional Investor Security Funds as the
16 collateral. However, many of the assets listed as collateral appear to be owned directly by PFI and not
17 individual LLC's.

18 35. Aiken continued receiving her monthly interest payments until June 2020, after Casey's
19 death. She did not receive her principal on June 15, 2020.

20 **D. Plaintiff and Class Members Informed That They Will Not Receive Scheduled**
21 **Distributions**

22 36. Instead, Plaintiff received a series of letters that Ragghianti Freitas LLP, a Marin County
23 law firm, sent to all PFI-PISF investors. The first letter, dated June 4, 2020, indicated that Ragghianti
24 was retained by PFI and PISF "to assist with the transition of ownership of the two companies" after
25 Casey's death. The firm commenced an audit of PFI-PISF and saw "legitimate questions involving the
26 structure and investment history of Mr. Casey's companies." Therefore, the firm voluntarily
27 approached the SEC and asked the SEC to conduct a fact-finding inquiry into Casey and his companies.
28 The letter indicated that the investigation is ongoing.

1 **The Nationwide Class:** All persons who invested in a PFI or PISF investment
2 vehicle and became (1) Lenders, secured by deeds of trusts on properties held by
3 various limited partnerships; (2) Lenders, secured by deeds of trust on various
4 properties owned solely by PFI; (3) Lenders to PISF, who were provided
5 collateral in the form of the interests held by PISF in various limited
6 partnerships, whose principal has not been repaid; or (4) members of various
7 LLCs created by Defendants.

8 **The California Class:** All persons residing in California
9 who invested in a PFI or PISF investment vehicle and became (1) Lenders,
10 secured by deeds of trusts on properties held by various limited partnerships; (2)
11 Lenders, secured by deeds of trust on various properties owned solely by PFI; (3)
12 Lenders to PISF, who were provided collateral in the form of the interests held
13 by PISF in various limited partnerships, whose principal has not been repaid; or
14 (4) members of various LLCs created by Defendants.

15 (collectively, “the Classes”). Excluded from the Classes are Defendants and their officers, directors,
16 and employees.

17 44. Plaintiff reserves the right to modify or amend these Class definitions before the Court
18 determines whether certification is appropriate.

19 45. Numerosity. The Class is so numerous that joinder of all members is impractical. Upon
20 information and belief, PFI-PISF sold unregistered securities to over 1,000 individuals.

21 46. Commonality. There are questions of law and fact common to the Class, which
22 predominate over any questions affecting only individual Class members. These common questions of
23 law and fact include, without limitation:

- 24 a. Whether Defendants violated the California Securities Act;
- 25 b. Whether the investments Defendants sold were exempt from registration;
- 26 c. Whether Defendants engaged in negligent misrepresentations concerning PFI-PISF
27 investments;
- 28 d. Whether Defendants breached their fiduciary duties to Plaintiff and the Classes;
- e. Whether Plaintiff and Class members are entitled to rescissory relief, damages, or
 other forms of relief available under the California Securities Act.

 47. Typicality. Plaintiff’s claims are typical of those of other Class members because each
seeks to recover for injuries caused by the misconduct alleged herein. Plaintiff is advancing the same
legal theories on behalf of herself and all members of the Classes.

1 68. Defendants intended that Plaintiff rely on the information and provided it for that purpose.

2 69. Defendants failed to exercise reasonable care or competence in obtaining and
3 communicating the misrepresented or and/or omitted facts to Plaintiff.

4 70. Plaintiff justifiably relied upon Defendants' misrepresentations and omissions in entering
5 into the promissory notes.

6 71. As a direct and proximate result of Defendants' misrepresentations and omissions, and
7 Plaintiff's reliance thereon, Plaintiff suffered direct and consequential losses.

8 72. Defendants' actions were so reckless or wanting in care that they constitute a conscious
9 disregard or indifference to the rights of the Plaintiff. Thus, Plaintiff is entitled to an award of punitive
10 damages.

11 73. As a consequence of its negligent misrepresentations, Defendants are liable for actual
12 damages, in an amount to be proven at trial, punitive damages, the costs of collection, litigation expenses,
13 and recoverable costs, and pre- and post-judgement interest at the maximum prevailing statutory rate.

14 **FIFTH CLAIM FOR RELIEF**
15 **Breach of Contract**
16 **Against PISF**

17 74. Plaintiff realleges and incorporates by reference paragraphs 1 through 49 as if set forth in
18 full herein.

19 75. In connection with their investments, Plaintiff and each member of the Classes entered
20 into a Straight Note with PISF, an LLC operating agreement (and related agreements), or other investment
21 contracts under which Defendants would pay monthly interest payments with the principal due on a
22 specified date.

23 76. Plaintiff has performed all of the conditions, covenants, and promises required on her part
24 to be performed in accordance with the terms and conditions of the promissory notes and other
25 agreements

26 77. Defendants have failed and/or refused to perform their obligations in full accordance with
27 the terms and conditions of the notes and other agreements.
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2 Dated: July 2, 2020



3 **GIBBS LAW GROUP LLP**
4 Michael L. Schrag (SBN 185832)
5 Linda Lam (SBN 301461)
6 505 14th Street, Suite 1110
7 Oakland, California 94612
8 Telephone: 510-350-9700
9 Facsimile: 510-350-9701
10 mls@classlawgroup.com
11 lpl@classlawgroup.com

12 **SILVER LAW GROUP**
13 Scott L. Silver (Fla Bar No. 095631)
14 11780 W. Sample Road
15 Coral Springs, FL 33065
16 Telephone: 954-755-4799
17 Facsimile: 954-755-4684
18 ssilver@silverlaw.com