

1 Geoffrey A. Munroe (SBN 228590)
 Amy M. Zeman (SBN 273100)
 2 Linda P. Lam (SBN 301461)
GIBBS LAW GROUP LLP
 3 1111 Broadway, Suite 2100
 Oakland, California 94607
 4 Telephone: (510) 350-9700
 Facsimile: (510) 350-9701
 5 gam@classlawgroup.com
 amz@classlawgroup.com
 6 lpl@classlawgroup.com

7 Scott L. Silver (*pro hac vice* forthcoming)
 8 Ryan A. Schwamm (*pro hac vice* forthcoming)
SILVER LAW GROUP
 9 11780 W. Sample Road
 Coral Springs, FL 33065
 10 Telephone: 954-755-4799
 Facsimile: 954-755-4684
 11 ssilver@silverlaw.com
 rschwamm@silverlaw.com

12 *Counsel for Plaintiffs*

13
 14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

15
 16 Peter A. Bagatelos and Anne M. H. Bagatelos, as
 Trustees of the Peter A. Bagatelos and Anne M. H.
 17 Bagatelos Revocable Trust; Karen C. Bagatelos;
 Daniel Forest Levy; 1320 Magnolia, LLC; Marian
 18 O’Dowd; Michael A. Bagatelos, as Trustee of The
 Michael A. Bagatelos Revocable Trust UDT Dated
 19 February 7, 2019 and as Amended March 13,
 20 2019; Carolyn Lee Walker Davis, as Trustee of the
 Walker Davis Family Trust Agreement Dated
 21 November 4, 2017; Dennis W. Green and Susan
 M. Green, as Trustees of the Dennis W. Green and
 22 Susan Marie Green Revocable Trust; and Jonathan
 Marmelzat, as Trustee of The Jonathan C.
 23 Marmelzat Revocable Trust U/T/D July 24, 2008,

24 Plaintiffs,

25 v.

26 Umpqua Bank,

27 Defendant.
28

Case No. 3:23-cv-2759

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

INTRODUCTION

1
2 1. For several decades, Ken Casey and Lewis Wallach offered investors safe, steady returns
3 backed by Marin County real estate. When Casey died suddenly in May 2020, however, it quickly
4 became apparent that their investment business, Professional Financial Investors (PFI), was actually a
5 long-running Ponzi scheme likely to cost investors hundreds of millions of dollars.

6 2. There was nothing particularly clever or original about Casey and Wallach’s Ponzi
7 scheme. It would have been obvious to anyone with access to PFI’s financials. They were raising
8 hundreds of millions of dollars from mostly local mom and pop investors, by promising returns that
9 income from the properties couldn’t cover. To make the promised interest payments and fund their
10 lavish lifestyles, Casey and Wallach were depositing money from new investors into company accounts
11 and then using those funds to pay previous investors and for their personal benefit.

12 3. The Ponzi scheme was so obvious that within a month of Casey’s death, the scheme was
13 publicly exposed, the SEC had opened an investigation, and PFI suspended monthly payments to
14 existing investors.

15 4. Someone did have a clear view of PFI’s financials far earlier—Umpqua Bank, the
16 financial institution where Casey and Wallach maintained every account they used to operate this
17 multi-decade Ponzi scheme. But rather than expose their fraudulent business, Umpqua chose to profit
18 from it.

19 5. Plaintiffs are among those investors who have lost their savings as a result of the PFI
20 Ponzi scheme and Umpqua Bank’s knowing participation in that scheme. PFI has undergone
21 bankruptcy proceedings and has not been able to make full restitution. Plaintiffs seek to hold Umpqua
22 liable for aiding and abetting the Ponzi scheme and require it to make amends to them.

PARTIES

23
24 6. Plaintiffs Peter A. Bagatelos and Anne M. H. Bagatelos are citizens and residents of
25 Foster City, California. They are trustees of the Peter A. Bagatelos and Anne M. H. Bagatelos
26 Revocable Trust.

27 7. Plaintiff Karen C. Bagatelos is a citizen and resident of San Francisco, California.

28 8. Plaintiff Daniel Forest Levy is a citizen and resident of Tiburon, California.

1 9. Plaintiff 1320 Magnolia, LLC was formed in California and its principal address is in
2 Point Reyes Station, California. Mary Roy Michaels is a citizen and resident of Point Reyes Station,
3 California and is the managing member of 1320 Magnolia, LLC, of which she and her husband,
4 Andrew Michaels, are the only members.

5 10. Plaintiff Marian O’Dowd is a citizen and resident of Vallejo, California.

6 11. Plaintiff Michael A. Bagatelos is a citizen and resident of San Francisco, California. He
7 is the sole trustee of The Michael A. Bagatelos Revocable Trust UDT Dated February 7, 2019 and as
8 Amended March 13, 2019.

9 12. Plaintiff Carolyn Lee Walker Davis is a citizen and resident of San Rafael, California.
10 Davis is the sole trustee of the Walker Davis Family Trust Agreement Dated November 4, 2017.

11 13. Plaintiffs Dennis W. Green and Susan M. Green are citizens and residents of Santa Rosa,
12 California. They are trustees of The Dennis William Green and Susan Marie Green Revocable Trust.

13 14. Plaintiff Jonathan Marmelzat is a citizen and resident of Sebastopol, California.
14 Marmelzat is the sole trustee of The Jonathan C. Marmelzat Revocable Trust U/T/D July 24, 2008.

15 15. Defendant Umpqua Bank is a community bank organized and chartered in Oregon, with
16 its principal place of business in Portland, Oregon.

17 **JURISDICTION**

18 16. The Court has subject matter jurisdiction under 28 U.S.C. § 1332(a) because Plaintiffs
19 and Umpqua are citizens of different states and the matter in controversy exceeds \$75,000.

20 **INTRADISTRICT ASSIGNMENT**

21 17. Assignment to the San Francisco Division is appropriate because the Ponzi scheme at
22 issue in this litigation was devised and orchestrated in Marin County. Ken Casey was a resident of
23 Marin County, PFI was headquartered in Marin County, and almost all of the real property Casey and
24 Wallach offered as collateral is located in Marin County—including the real property used as collateral
25 for Plaintiffs’ investments. Umpqua Bank also maintains branches in Marin County, from which it did
26 business with PFI and aided and abetted this fraudulent scheme.

FACTUAL ALLEGATIONS**A. The PFI Ponzi scheme**

18. Ken Casey is a former accountant who, in 1997, was convicted of 21 counts of bank fraud, five counts of tax evasion, five counts of filing false income tax returns, and one count of conspiracy to defraud the United States. He was sentenced to 18 months in prison and lost his license to practice public accountancy.

19. When Casey died unexpectedly on May 6, 2020, his ex-wife, who was the executor of his estate, learned that Casey's criminal activity did not stop in 1997. She retained a local law firm to assist with the transition of his two real estate investment companies, Professional Financial Investors, Inc. (PFI) and Professional Investors Security Fund, Inc. (PISF). The law firm immediately recognized Casey had been running a fraudulent Ponzi scheme—as the firm put it in a June 4th letter to investors, “At the outset of the review it became apparent that there existed legitimate questions involving the structure and investment history of Mr. Casey's companies.” Within a month of Casey's death, the SEC had initiated a formal investigation and monthly payments to investors were suspended. Wallach was criminally indicted and ultimately plead guilty to wire fraud. PFI and PISF soon entered bankruptcy, where a forensic analysis of the companies' records and bank accounts quantified the full extent of the harm wrought by the PFI Ponzi scheme: over 1,200 investors had been bilked out of more than \$250 million between 2007 and 2020.

20. Some investor money was used to purchase commercial and multi-unit residential real estate, which was liquidated in bankruptcy and used to partially repay defrauded investors. But because most of investors' money was used to inflate the returns paid to prior investors and to personally enrich Casey and Wallach, defrauded investors like Plaintiffs have so far recovered only 40% of their original investments.

21. PFI raised money from investors by holding itself out as a legitimate real estate investment company and offering individuals the opportunity to fund the purchase of commercial or multi-unit residential properties and earn returns from the rental income. PFI offered two primary investment vehicles: promissory notes or memberships in the LLCs that purchased the real estate investments. Noteholders received monthly payments at fixed interest rates while LLC members

1 received consistent quarterly payments.

2 22. In the few years before Casey's death, PFI also offered some investors the opportunity to
3 become tenants in common with PFI in newly purchased buildings. Plaintiffs are among the investors
4 who became tenants in common with PFI. In exchange for their investment money, Plaintiffs became
5 deeded owners of a building that PFI co-owned, and were promised quarterly distributions at fixed
6 interest rates.

7 23. But little did Plaintiffs know, they were actually investing in a fraudulent Ponzi scheme
8 that used new investor money to (i) fund a substantial portion of the monthly and quarterly payments it
9 was making to existing investors, (ii) cover recurring shortages in bank accounts previously opened for
10 the benefit of prior investors, and (iii) fund transfers to Casey's and Wallach's personal bank accounts.

11 24. Since Casey's death and the public exposure of the fraudulent scheme, PFI and PISF
12 have undergone bankruptcy proceedings. The bankruptcy court appointed an independent director for
13 the companies, who hired a forensic accounting firm to determine how the Ponzi scheme operated, and
14 how much money investors lost as a result of the fraud. The independent director sold PFI and PISF's
15 real estate holdings in an effort to return as much value as possible to investors. But even after all those
16 efforts, the Ponzi scheme has still cost Plaintiffs over \$4.2 million in losses from their tenancy-in-
17 common investments.

18 **B. The Umpqua bank accounts used to operate the scheme**

19 25. PFI and PISF orchestrated the purchase of approximately 71 properties over the years.
20 These properties were owned by LLCs (with PFI as the managing member), by limited partnerships
21 (with PFI as the general partner), or by PFI itself (with investors as tenants in common). For each real
22 estate purchase, PFI set up a separate bank account at Umpqua Bank in Novato where investor funds
23 raised for that particular real estate investment could be segregated from other investments and from
24 PFI and PISF's corporate funds.

25 26. PFI and PISF also each maintained a general corporate account for company money.
26 And each company maintained at least one clearing account: PFI maintained one clearing account,
27 titled "PFI Clearing," and PISF maintained two clearing accounts, titled "PISF Clearing" and "PISF
28 Transfer." The clearing accounts were the primary vehicle used to defraud investors and keep the PFI

1 Ponzi scheme running.

2 27. Clearing accounts are pass-through accounts that are designed to temporarily hold funds
3 before they are transferred to a more permanent location. They carry a balance only when funds need to
4 be transferred somewhere else and return to a zero balance once those funds are cleared out, which
5 typically happens on a daily basis. Clearing accounts are often used by businesses to simplify routine
6 banking transactions. In the case of an investment company like PFI, clearing accounts are often used
7 to receive investor wires or checks, which are then re-routed to the appropriate investment account.

8 28. PFI sometimes cleared new investor money out of its clearing accounts as expected. If
9 an investor wired a \$100,000 investment into a PFI clearing account, PFI might then transfer the exact
10 same amount into the appropriate investment account. But on many occasions, when new investor
11 funds were deposited into a clearing account, PFI would let them sit in the clearing account
12 indefinitely, commingle those funds with other new investor funds, and eventually use that money for
13 an illicit purpose. The funds might end up funding payments to existing investors (which were
14 sometimes made by issuing a wire or check directly to investors and sometimes through a payroll
15 processing company called PRG), or the funds might be used to cover shortages in a variety of other
16 accounts, including shortages in other clearing accounts or in PFI's general accounts. Or they might be
17 used to fund transfers to Casey's and Wallach's personal bank accounts.

18 **C. Umpqua's participation in the PFI Ponzi scheme**

19 **1. Umpqua knew how PFI was using its clearing accounts: it alerted PFI to**
20 **recurring overdrafts and helped PFI use investor funds to cover them.**

21 29. Umpqua closely monitored PFI's accounts and knew PFI was using its clearing accounts
22 to misappropriate recently deposited investor money. Federal banking regulations required Umpqua to
23 understand PFI's business and account structure, monitor PFI's transactions, and report suspicious
24 account activity. Client monitoring is particularly important when large amounts of money are
25 involved, which creates a greater risk that the bank's services are being used for illicit purposes. PFI
26 was the Novato branch's top client and one of Umpqua's top 20 business clients overall. Umpqua
27 referred to PFI as "a premier client," a "special customer," a "very valuable and profitable client," and
28 "HUGE balance customers."

1 30. Consistent with its regulatory obligations, Umpqua knew a lot about PFI’s business and
2 accounts. It knew PFI raised money from investors to purchase commercial and multi-unit residential
3 real estate. It also knew that PFI regularly purchased new properties and that each time, it set up a
4 segregated account for that property to ostensibly keep those investor funds separate from other
5 investor funds. And it knew PFI used its clearing accounts to accept new investors’ money via check or
6 wire.

7 31. One Umpqua employee in particular was especially familiar with PFI’s business and
8 bank accounts: June Weaver, a private banker at the Novato branch who had decades of experience in
9 banking and worked closely with PFI for nearly 15 years. Umpqua’s records show that between 2012
10 and 2020, Weaver exchanged at least 1,600 emails with PFI; she also regularly corresponded with PFI
11 by phone and by visiting their offices, typically to assist with deposits or other account transactions.
12 Weaver was so heavily involved with PFI’s transactions that Wallach once commented to her, “It’s
13 probably scary how much you will remember about all our accounts. 50 years from now you will
14 always remember 20064735”—the account number for the PISF Clearing Account prior to 2015.

15 32. Weaver spent a great deal of time monitoring PFI’s accounts and knew that the company
16 had to constantly move money around to address recurring overdrafts and funds shortages. When asked
17 during a deposition whether \$400,000 was “an unusually large amount of a shortfall for PFI,” Weaver
18 answered, “No.” This was a strong indication that PFI was defrauding its investors: the FDIC
19 specifically advises banks to be on the lookout for frequently overdrawn accounts, which is known to
20 be a red flag for Ponzi schemes since Ponzi perpetrators are often forced to shuffle money around just
21 as PFI was doing. Weaver herself acknowledged that frequent overdrafts are a red flag. What was even
22 more concerning was that these overdrafts often involved the clearing accounts—either money from a
23 clearing account was used to transfer funds into the overdrawn account or a clearing account was itself
24 short of funds. That is highly suspicious both because the clearing accounts were known to be where
25 new investor funds were deposited and because clearing accounts are expected to be merely pass-
26 through accounts and should never be overdrawn.

27 33. Weaver has also admitted during a deposition that she spent a lot of time monitoring
28 PFI’s accounts and helping them shuffle money around to address overdrafts and funds shortages.

1 Weaver initially denied knowing that PFI’s clearing accounts were used to receive new investor money.
2 But after being shown her own emails referring to new investor money being deposited into the
3 clearing accounts, Weaver acknowledged that she did in fact know that PFI was using new investor
4 money to cover shortfalls in other accounts:

5 Q. And you knew that PFI was constantly moving money around to take care of the shortfalls in
6 certain accounts, right?

7 A. They -- they would take care of it.

8 Q. How?

9 A. By transferring money.

10 Q. From one account to another account, correct?

11 A. From many accounts, possibly, to one account.

12 **Q. And you knew that some of those accounts contained money from new investors, correct?**

13 **A. Based on what we've looked at here, I'd have to say yes.**

14 34. Instead of reporting PFI’s frequent overdrafts and repeated use of new investor funds to
15 cover those shortages, Weaver went out of her way to cover for PFI—even if it meant violating banking
16 protocol and engaging in unsafe and unsound banking procedures. On one occasion, Weaver “made a
17 ‘ghost’ deposit so [she] could pay the item” that PFI owed. Weaver could not explain her behavior
18 when asked about it at her deposition, but it appears she either used bank funds to cover this overdraft
19 or falsified bank records by making an entry into the bank’s books to show that the overdraft was
20 covered when it was not.

21 35. That was not the only time Weaver took it upon herself to make transactions inside PFI’s
22 accounts to help address overdrafts or funds shortages. Another time, Weaver alerted PFI that two of its
23 investment accounts were overdrawn. PFI responded that it had transferred money from PFI Clearing
24 into each account. But it apparently did not transfer enough into one of the accounts, and so without
25 first obtaining client authorization, Weaver conducted her own transfer. As she put it, “I had to do a
26 quick transfer to make sure the \$75000 check got paid (which it did).” And on yet another occasion,
27 Weaver took it upon herself to redirect a wire to a different PFI account without first obtaining client
28 authorization—in violation of Regulation J, which requires banks to match the incoming wire transfer
beneficiary account number with the account into which the wire is being deposited.

1 **2. Umpqua employees personally conducted numerous transfers of investor**
 2 **funds to Casey’s and Wallach’s personal bank accounts.**

3 36. A key element of the PFI Ponzi scheme was the regular transfer of investor funds from
 4 one of PFI’s clearing accounts—where new investor money was deposited by check or wire—to
 5 Casey’s and Wallach’s personal bank accounts at Umpqua’s Novato branch. A direct transfer from a
 6 business account to a personal account is unusual and can be an indication that money is being
 7 misappropriated for personal gain. That is why Umpqua lists the commingling of funds between
 8 personal and business accounts as a high risk factor for illicit activity. It is also why Umpqua required
 9 any transfers between business and personal accounts to be personally handled and approved by branch
 10 employees.

11 37. Umpqua’s records show that on 179 occasions, Weaver or others at the small Novato
 12 branch personally transferred a total of \$5.2 million to one of Ken Casey’s or Lewis Wallach’s personal
 13 accounts from a PFI clearing account where new investor money was regularly deposited. At her
 14 deposition, Weaver affirmed she knew “there was investor money flowing into a clearing account and
 15 then there were times where [she was] assisting in transferring money from the clearing account into
 16 Ken Casey’s personal account.” She testified that she knew there were “many” other transfers similar
 17 to a \$350,000 transfer she made from PISF Clearing to Casey’s personal account.

18 38. Weaver and other Novato branch employees would have seen activity in PFI’s accounts
 19 before executing these transfers. The Novato branch must have known Casey and Wallach were
 20 fraudulently transferring newly deposited investor funds to their personal bank accounts. For instance,
 21 when Novato branch manager A.J. Vazquez transferred \$1.1 million from PFI Clearing to Wallach’s
 22 personal bank account on June 22, 2018, she would have first had to review recent account activity for
 23 PFI Clearing to verify the source of the funds and ensure the transfer could be completed. She would
 24 have seen the following activity:

Date	Type	Payor/(Payee)	Amount	Ending Balance
06/15/18	Credit	Arthur J. Riggs	\$150,000.00	\$156,618.78
06/15/18	Credit	David Fersten	\$120,000.00	\$276,618.78
06/18/18	Check	Alirio Avilas	(\$10,000.00)	\$266,618.78
06/19/18	Credit	Meng Hsueh & Shin-Jung Ho	\$230,000.00	\$496,618.78
06/19/18	Credit	Meng Hsueh & Shin-Jung Ho	\$210,000.00	\$706,618.78
06/19/18	Wire	GCW Wattenberg/ L.L.R. LLC	(\$35,000.00)	\$671,618.78

Date	Type	Payor/(Payee)	Amount	Ending Balance
06/20/18	Debit	Bank Fees	(\$31.70)	\$671,587.08
06/21/18	Credit	Lewis Wallach	\$600,000.00	\$1,271,587.08
06/22/18	Wire	Ramin Akhbari	\$50,000.00	\$1,321,587.08
06/22/18	Wire	Thompson Knight LLP	(\$50,117.04)	\$1,271,470.04
06/22/18	Debit	Lewis Wallach	(\$1,100,000.00)	\$171,470.04

39. Vazquez would have seen that the \$1.1 million transfer Wallach had requested consisted of at least \$500,000 in new investor funds—highlighted in green—that had been deposited into the PFI Clearing account over the past week. Instead of promptly transferring those funds to a segregated investment account, as one would expect when looking at an investment company’s clearing account, Wallach was using that new investor money to line his own bank account. The recent account activity also showed that just the day before, Lewis Wallach had deposited a check for \$600,000 from a personal account he maintained at Bank of America in San Francisco. Instead of transferring this money directly to his personal account at Umpqua Bank, he transferred it to the PFI Clearing Account, where it would be combined with \$500,000 of new investor funds and transferred to his Umpqua personal account (before being wired back to Bank of America the next business day). This is highly suspicious behavior that would have raised a number of red flags for Vazquez if she were not already aware that Wallach and PFI were engaged in fraudulent activity. Yet Vazquez still personally completed the transfer for Wallach. And when the suspicious transaction triggered an automated alert warning of potential fraud, Umpqua simply dismissed the alert.

3. Umpqua’s automated monitoring system repeatedly warned it of suspicious activity within PFI’s clearing accounts.

40. As part of its regulatory obligations, Umpqua uses an automated system to monitor for indications of fraud or other illicit activity. Between June 2018 and April 2020, Umpqua’s system issued 146 alerts for unusual activity within PFI’s accounts—at least 61 of which specifically flagged the companies’ clearing accounts for further investigation. The alerts generated prior to June 2018 are no longer available, but all indications are the alerts generated in the preceding months and years were similar in type and frequency.

41. An analyst investigating the PFI alerts could not help but see that investor money was

1 being misused. Umpqua has confirmed each of the PFI alerts were indeed investigated and that,
 2 consistent with federal regulations, its analysts were required to review the transactions flagged by the
 3 alert, review the nature of the customer's business and the services they offer, understand why the
 4 system issued an alert for the customer's account activity, confirm the source of the funds at issue, and
 5 assess whether the transactions flagged for review were reasonable in light of the customer's business.
 6 Umpqua has not been able to explain why those alerts were dismissed, even though it is standard
 7 industry practice to document the results of an alert investigation. What is clear is that Umpqua's
 8 automated monitoring system was repeatedly flagging fraudulent activity in PFI's clearing accounts
 9 and Umpqua was repeatedly dismissing those alerts.

10 42. There are many examples of automated alerts flagging PFI's ongoing fraudulent activity
 11 that Umpqua chose to ignore. They illustrate how automated alerts are investigated, what the analyst
 12 would have learned in the course of the investigation, and why there was no legitimate reason for
 13 Umpqua to have closed the automated alerts without taking action. Umpqua's investigation of virtually
 14 any of the 61 alerts involving PFI's clearing accounts would have shown unusual activity inconsistent
 15 with PFI's stated business as an investment company and the stated purpose of its accounts—
 16 investment clearing accounts not being used as clearing accounts, the indiscriminate commingling of
 17 investor funds, and the use of recently deposited investor money to fund payments to prior investors
 18 and to PFI's corporate officers.

19 43. To give just one brief example, on September 4, 2019, Umpqua's automated monitoring
 20 system flagged a \$650,000 wire transfer made from the PISF Clearing Account to Lewis Wallach's
 21 personal bank account at Bank of America. Upon reviewing the recent account activity for the PISF
 22 Clearing Account, Umpqua's investigating analyst would have seen the following information:

Date	Type	Payor/(Payee)	Amount	Ending Balance
08/15/19	Transfer	PISF, Inc. Transfer Account (UB #1054)	(\$250,000.00)	\$415,954.78
08/15/19	Wire	Honey Bee Meadow, LP	\$100,000.00	\$515,954.78
08/19/19	Check	Baker & McKenzie LLP	(\$50,844.55)	\$465,110.23
08/19/19	Wire	Pema L. Sherpa	\$20,000.00	\$485,110.23
08/20/19	Debit	Bank Fees	(\$2,331.05)	\$482,779.18
08/20/19	Wire	Nathalie Babazadeh	\$100,000.00	\$582,779.18
08/26/19	Wire	Barbara Ryan	\$18,000.00	\$600,779.18
08/26/19	Wire	Steve Tourdo Revocable Trust	\$200,000.00	\$800,779.18

Date	Type	Payor/(Payee)	Amount	Ending Balance
08/26/19	Wire	SF Fire Credit Union, Purpose: Transfer Funds for Real Estate Investment	\$170,000.00	\$970,779.18
09/04/19	Wire	Lewis Wallach	(\$650,000.00)	\$320,779.18

44. The incoming deposits preceding the outgoing wire were each from investors. That would be clear to the investigating analyst from the nature of PFI's stated business as an investment company, the name of the account, the size of the deposits, the round dollar figures, and the identities of the payors. One of the wires even helpfully stated "Purpose: Transfer Funds for Real Estate Investment." A large outgoing wire of investor funds sitting in an investment company's clearing account to the president of that company's personal bank account is a huge red flag. But the automated alert was nonetheless closed for an undisclosed reason. There is no valid reason for Umpqua to have dismissed this alert without taking further action. Alerts should not be closed unless the bank can affirm that the flagged activity was legitimate and consistent with the customer's stated business. That conclusion would be impossible to reach here. Wallach would later plead guilty to misappropriating millions in investor funds as part of a fraudulent Ponzi scheme and this transaction was a significant part of that scheme. The fact that Umpqua took no action in response to this alert—as well as many other alerts that similarly warned of suspicious activity within PFI's clearing accounts—is therefore a strong indication that the bank already knew one of its most lucrative customers was engaged in fraudulent activity and had made a deliberate decision to continue providing banking services to that customer anyway.

4. Umpqua proactively worked to protect PFI and conceal its activities from others.

45. Ken Casey and Lewis Wallach came to be business partners out of necessity. In the late 1990s, Casey pled guilty to 21 counts of bank fraud, 5 counts of tax evasion, 5 counts of aiding and assisting in the preparation and filing of false tax returns, and 1 count of conspiracy to defraud the United States. He was sentenced to 18 months in prison and lost his license to practice public accountancy. It should have been impossible for Casey to continue his life of financial crime through PFI and PISF: no reasonable lender will extend commercial real estate loans to a financial criminal and

1 no reasonable bank will provide banking services to an investment company whose owner had
2 previously been convicted of bank fraud. Casey realized this and turned to two collaborators: Lewis
3 Wallach, who agreed to serve as PFI and PISF's public-facing president, and a local bank owned by a
4 friend who was willing to provide the companies' banking services despite Casey's criminal record.

5 46. Umpqua acquired the local bank's assets and liabilities in 2012, and although it
6 apparently did not retain most of that bank's records, it did internally circulate a memorandum that
7 discussed Casey's criminal history. Later emails within Umpqua confirm the bank knew PFI's "ex-
8 CEO, Ken Casey, was prosecuted by the IRS for tax evasion and fraud. His current role is 'advisor' but,
9 as far as I could tell, he effectively is still running the company." PFI didn't want anyone else to know
10 about Casey's criminal history, though, so it asked Weaver to remove Casey's name from its bank
11 statements. Weaver agreed even though she knew that lenders often ask for bank statements before
12 extending commercial real estate loans. She claimed she thought Casey was retiring, but Weaver's
13 contemporaneous emails reflect no such thing. To the contrary, they show Weaver holding discussions
14 with other Umpqua employees regarding "Kenneth Casey DBA Professional Financial Investors" and
15 continuing to personally transfer large sums of investor funds to Casey's personal accounts.

16 47. That was not the only time Umpqua proactively worked to protect PFI and help conceal
17 its illicit activities from others. When PFI was flagged for enhanced due diligence reviews, Weaver
18 consistently convinced the regulatory compliance department not to scrutinize PFI by misrepresenting
19 the nature of its business. PFI was repeatedly flagged because its total risk score was 2100—three times
20 the threshold for high-risk customers—and because it handled other people's money, which creates
21 added opportunities for fraud, money laundering, and other illicit activities. Weaver knew that PFI
22 purchased properties for separate limited liability companies consisting of third-party investors. She
23 collected the Articles of Organization and Operating Agreements each time she opened up a new
24 segregated investment account, and she had represented to others at Umpqua that "[e]ach of their
25 properties is its own LLC." But she falsely represented to the regulatory compliance department that
26 there was no need to scrutinize PFI's activities because PFI "owns all the properties," "[t]hey are the
27 property owners of record."

28 48. Weaver further protected PFI when an investor's attorney contacted the bank to

1 complain about its business practices. She first sent an email to PFI warning, “[t]here’s something I
2 want to make you aware of by phone.” It’s unclear exactly what she told PFI, but a follow-up email
3 from Weaver provided some details about the complaining investor and assured PFI that “they got
4 nothing from us.” The next business day, PFI wired the investor her money back using money from one
5 of its clearing accounts.

6 49. This is all highly unusual behavior in the banking world and a further indication that
7 Weaver was complicit in PFI’s fraudulent Ponzi scheme. Wallach’s request to remove Casey’s name
8 from PFI statements was a red flag for fraud. It should have been reported, but instead Weaver offered
9 to remove Casey’s name from other accounts as well. A phone call from an attorney complaining about
10 one of the bank’s customers is also highly unusual, as Weaver herself has acknowledged. Weaver
11 should have filed a Report of Unusual Activity, but instead she privately warned PFI and took steps to
12 avoid making a full written record. All bankers are trained to monitor their clients for signs of potential
13 fraud and report anything unusual. Weaver’s repeated failure to do so and willingness to misrepresent
14 the nature of PFI’s business to avoid enhanced due diligence review is another strong indication that
15 Weaver knew about PFI’s fraudulent activity and was trying to prevent others from discovering it as
16 well.

17 **5. Umpqua did not express surprise or conduct an internal investigation when**
18 **the PFI Ponzi scheme was publicly exposed.**

19 50. If Umpqua did not already know about the PFI Ponzi scheme when it was publicly
20 exposed in the summer of 2020, standard banking practice would have been to conduct a thorough
21 investigation into how Casey and Wallach were able to hide their illicit activities from bank personnel
22 for more than a decade. The bank would have documented its findings and implemented changes to its
23 monitoring and detection systems to ensure that something similar wouldn’t happen again. But
24 Umpqua did neither: there was no reason to investigate a Ponzi scheme that bank personnel already
25 knew about and no reason to change a monitoring system that repeatedly detected that Ponzi scheme.

26 51. Umpqua’s Operations Solutions Manager apparently did begin an internal review of
27 PFI’s accounts, but quickly abandoned it after realizing the Novato branch was regularly helping Casey
28 transfer investor funds to his personal bank accounts. Upon reviewing the recent activity for one such

1 account, she messaged the Novato branch manager, “Holy moly I see transfers were allowed
2 (\$40,000.00 transfer from the PFI [Transfer account] to [Casey’s personal account] on 5/12 and
3 \$21,000.00 on 4/12 and 25,000.00 on 3/31).” All written communication ceased at that point.

4 52. During depositions, Weaver and other Novato branch employees claimed they were
5 shocked when the PFI Ponzi scheme was publicly exposed. But even though branch personnel
6 regularly communicate with each other by email and through a messaging app, none of those
7 contemporaneous communications reflect surprise. Instead, Vazquez messaged the Novato branch’s
8 former manager: “sooo im pretty sure I will be losing all the PFI deposits.” And Weaver, who had only
9 just returned to the Novato branch after self-isolating for the first few months of the Covid pandemic,
10 abruptly retired.

11 53. Vazquez’s fear of losing PFI’s deposits stems from Umpqua’s unhealthy focus on branch
12 profits and was a major reason why the Novato branch never did anything to stop PFI’s fraudulent
13 activity. Umpqua assigns branch employees a goal for customer accounts and total deposits and ties
14 bonuses, commissions, and incentives to those metrics. If a branch employee falls behind on a goal,
15 “there would be coaching.” Umpqua also places branches in competition with each other for further
16 financial incentives based on deposit growth and new accounts, grouping them into teams called “Gold
17 Diggers” or “Money Maker Bankers.” The Novato branch was highly dependent on PFI to maintain its
18 metrics and carefully monitored PFI’s transactions with their own financial well-being in mind. When
19 Weaver wrote to Vazquez on one occasion, “PFI is wiring out 7 million this morning..darn,” Vazquez
20 responded: “noooooooooo!!!!!!!!!!!!!!” and “oh man. hopefully they bring it in again.”

21 54. Reporting PFI’s fraudulent activity would have caused the Novato branch to lose dozens
22 of accounts and over 10% of its total deposits, leading to reduced compensation, worse performance
23 reviews, and potentially even loss of employment. As Vazquez put it, if she lost deposits from PFI,
24 she’d have to make them up somewhere else “[b]ecause I have a goal to hit at the end of the year.” As
25 she put it: “[A]t the end of the day, I have to make sure that that store goal is met.” Such an unhealthy
26 and unforgiving focus on the bank’s total accounts and deposits is a recipe for disaster: Umpqua sent
27 the message that money is more important than sound banking practices and compliance with
28 regulatory responsibilities. The predictable result, as in all too many banking scandals of late, was that

1 employees were deterred from reporting fraudulent activity, which was instead allowed to continue
2 unabated for years on end.

3 PLAINTIFFS' EXPERIENCES

4 Peter A. Bagatelos and Anne M. H. Bagatelos

5 55. Plaintiff Peter A. Bagatelos is a lawyer who met Ken Casey in the 1980's. Bagatelos had
6 just started a law firm during that time, and hired Casey to be the firm's accountant. Casey provided
7 accounting services to Bagatelos' firm for several years. The two also became friends over time, and
8 would often get together for meals and social events in later years.

9 56. In the course of getting to know Casey on both a personal and professional level,
10 Bagatelos learned about the opportunity to invest in PFI. Bagatelos started investing with Casey in the
11 1990's and continued to invest over decades. Bagatelos placed his savings in several investment
12 vehicles that PFI offered, including limited partnerships and second deeds of trust.

13 57. Around the beginning of 2020, Bagatelos and his siblings (Plaintiffs Karen Bagatelos
14 and Michael Bagatelos) received proceeds from the sale of their late mother's home. All three were
15 looking to invest those proceeds in another property through a Section 1031 exchange, meaning they
16 were looking to put the money they received from the sale of their mother's property towards the
17 purchase of another investment property.

18 58. They learned about the opportunity to become tenants in common in a building that PFI
19 was looking to purchase, 1441 Casa Buena Drive in Corte Madera, California. After speaking with
20 Casey and visiting the building, all three siblings decided to invest.

21 59. In January 2020, Peter Bagatelos and his wife, Plaintiff Anne M. H. Bagatelos, invested
22 \$690,877 with PFI through The Peter A. Bagatelos and Anne M.H. Bagatelos Revocable Trust, which
23 became a tenant in common at 1441 Casa Buena Drive. The entire \$690,877 investment was made up
24 of Peter Bagatelos's share of the proceeds from selling his late mother's home.

25 60. The tenancy-in-common investment was supposed to provide Peter and Anne with 6%
26 interest per year (paid in quarterly distributions). The distributions were supposed to be funded from
27 operating revenue generated from the building. PFI would have a 30% ownership share in the building,
28 and would also manage the building.

1 **Karen C. Bagatelos**

2 61. Plaintiff Karen C. Bagatelos learned about PFI from her brother, Plaintiff Peter
3 Bagatelos, over ten years ago. Her family would occasionally socialize with Casey and his wife over
4 dinner. Karen first became a PFI investor in 2017, when she inherited one of her mother’s PFI
5 investments.

6 62. Around the beginning of 2020, Karen and her siblings (Plaintiffs Michael Bagatelos and
7 Peter Bagatelos) received proceeds from the sale of their late mother’s home. All three were looking to
8 invest those proceeds in another property through a Section 1031 exchange. They learned about the
9 opportunity to become tenants in common in a building that PFI was looking to purchase, 1441 Casa
10 Buena Drive in Corte Madera, California. After speaking with Casey and visiting the building, all three
11 siblings decided to invest.

12 63. In January 2020, Karen Bagatelos invested \$690,877 with PFI and became a tenant in
13 common at 1441 Casa Buena Drive. The entire \$690,877 investment was made up of her share of the
14 proceeds from selling her late mother’s home.

15 64. The tenancy-in-common investment was supposed to provide her with 6% interest per
16 year (paid in quarterly distributions). The distributions were supposed to be funded from operating
17 revenue generated from the building. PFI would have a 30% ownership share in the building, and
18 would also manage the building.

19 **Daniel Forest Levy**

20 65. Plaintiff Daniel Forest Levy learned about PFI from his father and stepmother, who were
21 also investors. Around early 2018, Levy had just sold the house he inherited from his mother, and was
22 looking to invest in a different property through a Section 1031 exchange.

23 66. After meeting with Casey on a few occasions, Levy learned about the opportunity to
24 become a tenant in common in 19 Merrydale Road in Marin County, a building that PFI was looking to
25 purchase. PFI provided Levy with some reading materials on the building, which included how much
26 income it could generate, but Levy did not have a chance to tour the building in person. He decided to
27 invest after Wallach put some pressure on him to do so.

28 67. In April 2018, Levy invested \$400,000 with PFI and became a tenant in common at 19

1 Merrydale Road. The entire \$400,000 investment was made up of proceeds from the sale of his late
2 mother's home.

3 68. The tenancy-in-common investment was supposed to provide him with 6% interest per
4 year (paid in quarterly distributions). The distributions were supposed to be funded from operating
5 revenue generated from the building. PFI would have a 30% ownership share in the building, and
6 would also manage the building. PFI also told Levy that when the building was ultimately sold, he
7 would receive a share of its appreciation in value.

8 **1320 Magnolia, LLC**

9 69. Mary Roy Michaels and her husband, Andrew Michaels, are the only members of
10 Plaintiff 1320 Magnolia, LLC. They learned about PFI through another investor who had been
11 investing with Casey for decades. The Michaels first became PFI investors in 2018, when they
12 purchased promissory notes.

13 70. In late 2019, Casey introduced the Michaels to the idea of becoming tenants in common.
14 The Michaels owned a rental property in Concord, California, that was producing passive income.
15 Casey encouraged them to sell that property and put proceeds from that sale towards a building that PFI
16 was looking to purchase through a Section 1031 exchange.

17 71. The Michaels met with Casey and Wallach to discuss the tenancy-in-common
18 opportunity on several occasions, and also visited the property at 1441 Casa Buena Drive in Corte
19 Madera, California. They eventually agreed to sell their Concord property and to put the money they
20 made from it towards a tenancy-in-common investment with PFI.

21 72. In January 2020, the Michaels invested \$494,542 with PFI through their limited liability
22 company, 1320 Magnolia, LLC, which became a tenant in common at 1441 Casa Buena Drive. The
23 entire \$494,542 investment was made up of proceeds from the sale of the couple's previous investment
24 property in Concord.

25 73. The tenancy-in-common investment was supposed to provide 1320 Magnolia, LLC (and
26 thus the Michaels) with 6% interest per year (paid in quarterly distributions). The distributions were
27 supposed to be funded from operating revenue generated from the building. PFI would have a 30%
28 ownership share in the building, and would also manage the building. The Michaels were told that

1 1320 Magnolia, LLC would also share in any gains from the building's appreciation in value once it
2 was sold.

3 **Marian O'Dowd**

4 74. Plaintiff Marian O'Dowd learned about PFI from three different friends who were each
5 investors. In 2019, O'Dowd had recently sold an investment property in San Francisco that she had
6 held for over 30 years. She was looking to use the proceeds she made from selling that property to
7 invest in a new property through a Section 1031 exchange.

8 75. O'Dowd met with Casey and Wallach, who told her about the opportunity to become a
9 tenant in common in a building that PFI was looking to purchase. After visiting the building, O'Dowd
10 decided to invest.

11 76. In March 2019, O'Dowd invested \$642,041 with PFI and became a tenant in common at
12 100 Sycamore Avenue in San Anselmo, California. The entire \$642,041 investment was made up of
13 proceeds from the sale of O'Dowd's previous investment property in San Francisco.

14 77. The tenancy-in-common investment was supposed to provide O'Dowd with 6% interest
15 per year (paid in quarterly distributions). The distributions were supposed to be funded from operating
16 revenue generated from the building. PFI would have a 30% ownership share in the building, and
17 would also manage the building. O'Dowd was told that she would also share in any gains from the
18 building's appreciation in value once it was sold.

19 **Michael A. Bagatelos**

20 78. Plaintiff Michael A. Bagatelos learned about PFI from his brother, Plaintiff Peter
21 Bagatelos. Peter introduced Michael to Ken Casey over ten years ago, and Michael met Casey for
22 lunch or dinner several times over the years. When Michael inherited some money from his mother in
23 2017, he made his first investment in PFI.

24 79. Around the beginning of 2020, Michael and his siblings (Plaintiffs Karen Bagatelos and
25 Peter Bagatelos) received proceeds from the sale of their late mother's home. All three were looking to
26 invest those proceeds in another property through a Section 1031 exchange. They learned about the
27 opportunity to become tenants in common in a building that PFI was looking to purchase, 1441 Casa
28 Buena Drive in Corte Madera, California. After speaking with Casey and visiting the building, all three

1 siblings decided to invest.

2 80. In January 2020, Michael Bagatelos invested \$690,877 with PFI through The Michael A.
3 Bagatelos Revocable Trust UDT Dated February 7, 2019, and as Amended March 13, 2019, and
4 became a tenant in common at 1441 Casa Buena Drive. The entire \$690,877 investment was made up
5 of his share of the proceeds from selling his late mother's home.

6 81. The tenancy-in-common investment was supposed to provide him with 6% interest per
7 year (paid in quarterly distributions). The distributions were supposed to be funded from operating
8 revenue generated from the building. PFI would have a 30% ownership share in the building, and
9 would also manage the building.

10 **Carolyn Lee Walker Davis**

11 82. Plaintiff Carolyn Lee Walker Davis learned about PFI through her financial advisor. She
12 never met with Wallach or Casey before her making her first investment in PFI in 2019; she received
13 all the information she had about the company through her financial advisor.

14 83. Around early 2020, Davis's financial advisor encouraged her to sell an investment
15 property she had in Fairfield, California. He advised her to place proceeds from that sale in a tenancy-
16 in-common investment with PFI via a Section 1031 exchange. She took his advice and sold the
17 Fairfield property.

18 84. In January 2020, Davis invested \$340,000 with PFI through the Walker Davis Family
19 Trust Agreement Dated November 4, 2017, and became a tenant in common at 1732 Lincoln Avenue in
20 San Rafael, California. The entire \$340,000 investment was made up of proceeds from the sale of her
21 Fairfield property.

22 85. Davis was told that by becoming a tenant in common at 1732 Lincoln Avenue, she
23 would receive fixed quarterly distributions at 6% or higher from income that the building generated.
24 She understood that PFI would own 30% of the building and would be in charge of managing it – so
25 that she wouldn't need to do anything other than collect her distribution checks.

26 **Dennis W. Green and Susan M. Green**

27 86. Plaintiff Dennis W. Green met Casey through his mother, who had been a decades-long
28 investor before she passed away in 2018. Green first became a PFI investor after he inherited some of

1 his mother's investments.

2 87. Around the end of 2019, Green and his wife, Plaintiff Susan M. Green, had just sold an
3 investment property and were looking to use the proceeds from that sale to invest in a different
4 property through a Section 1031 exchange. Casey told them about the opportunity to become a tenant
5 in common in a building that PFI was looking to purchase. They visited the property itself (240 Tamal
6 Vista in Marin County) and felt assured by the fact that if they chose to invest, their name would be on
7 the property's deed.

8 88. In March 2019, the Greens invested \$1,000,000 with PFI through the Dennis William
9 Green and Susan Marie Green Revocable Trust and became a tenant in common at 240 Tamal Vista.
10 The entire \$1,000,000 investment was made up of proceeds from the sale of their previous investment
11 property.

12 89. The tenancy-in-common investment was supposed to provide the Greens with 6%
13 interest per year (paid in quarterly distributions). The distributions were supposed to be funded from
14 operating revenue generated from the building. PFI would have a 30% ownership share in the building,
15 and would also manage the building. The Greens were also told that they would share in any gains
16 from the building's appreciation in value once it was sold.

17 **Jonathan Marmelzat**

18 90. Plaintiff Jonathan Marmelzat learned about PFI in 2019 from a friend who was also a
19 PFI investor. During that year, Marmelzat had just sold an investment property and was seeking to
20 invest in a different property through a Section 1031 exchange.

21 91. Marmelzat met with Wallach, who told him about the opportunity to become a tenant in
22 common investor in a building that PFI was looking to purchase. After conversations with Wallach and
23 speaking with Casey on the phone, and visiting the building itself, Marmelzat agreed to invest.

24 92. In October 2019, Marmelzat invested \$300,000 through The Jonathan C. Marmelzat
25 Revocable Trust U/T/D July 24, 2008 to become a tenant in common along with PFI in a building
26 located at 240 Tamal Vista Boulevard in Marin County. Most of the \$300,000 were proceeds from the
27 sale of Marmelzat's previous investment property, but around \$25,000 of it was from Marmelzat's
28 personal savings.

1 Dated: June 2, 2023

/s/ Amy M. Zeman

GIBBS LAW GROUP LLP

Geoffrey A. Munroe (SBN 228590)

Amy M. Zeman (SBN 273100)

Linda P. Lam (SBN 301461)

1111 Broadway, Suite 2100

Oakland, California 94607

Telephone: 510-350-9700

gam@classlawgroup.com

amz@classlawgroup.com

lpl@classlawgroup.com

SILVER LAW GROUP

Scott L. Silver (Fla Bar No. 095631)

Ryan A. Schwamm (Fla Bar No.

1019116)

11780 W. Sample Road

Coral Springs, FL 33065

Telephone: 954-755-4799

ssilver@silverlaw.com

rschwamm@silverlaw.com

Counsel for Plaintiffs

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